Supreme Court, U.S.
FILED

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NO._____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

IN RE ELIJAH W. RATCLIFF, ETC.,

PETITIONER

ON PETITION FOR WRIT OF MANDAMUS

TO THE SUPREME COURT OF TEXAS

PETITION FOR WRIT OF MANDAMUS

==========
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==========

1790P

QUESTIONS PRESENTED

I. JURISDICTION WAS PROPERLY INVOKED IN THE TRIAL COURT BELOW BY THE ORIGINAL PETITION FOR JUDICIAL REVIEW TO CONTEST AN IMPROPER ASSESSMENT UNDER THE TEXAS UNEMPLOYMENT COMPENSATION ACT (Ct Ap Appx. pp 1 - 7 and 10-11; Ct Ap Tr. pp 2 - 6).

II. JURISDICTION OF THE TRIAL COURT EXTENDED TO REDRESS WRONGFUL CONDUCT COMMITTED BY STATE AGENCIES AND EMPLOYEES THROUGH THE FILING AND EFFECTIVE SERVICE OF PETITIONER'S AMENDED ORIGINAL PETITION (Ct Ap Appx. pp 12-14, 41 - 46 and 53 - 93; Ct Ap Tr. pp 18 - 24, 124 - 143 and 166 - 186).

III. JURISDICTION OF THE COURTS BELOW TO REMEDY CIVIL RIGHTS ABUSES AS ENGAGED BY RESPONDENTS NEGATIVELY AFFECTING ONE OR MORE PARTIES IS EXPRESSLY PROVIDED BY STATE OF TEXAS AND FEDERAL CONSTITUTIONAL PROVISIONS AND LEGISLATIVE ENACTMENTS (Ct Ap Appx. pp 1 - 7 and 53 - 93; Ct Ap Tr. pp 6 and 166 - 186).

IV. THE PROPOSITIONS OF PETITIONER'S REQUEST FOR ADMISSIONS AS DULY SERVED ON EACH TRIAL COURT DEFENDANT WERE EFFECTIVELY ADMITTED BY OPERATION OF THE RULES OF COURT (Ct Ap Appx. pp 16 - 39; Ct Ap Tr. pp 25- 46 and 75).

V. DISMISSAL OF THE MULTIPLE CLAIMS ASSERTED BY PETITIONER'S AMENDED

QUESTIONS PRESENTED
(CONT.)

PLEADINGS IN THE TRIAL COURT IS CONTRARY TO ESTABLISHED LAW AND PRECEDENT (Ct Ap Appx. pp 53 - 93; Ct Ap Tr. pp 124 - 143 and 166 - 186).

VI. THE WRIT OF MANDAMUS DIRECTING SUMMARY JUDGMENT FOR PETITIONER IS PROPER AS THE EVIDENCE ADDUCED ESTABLISHES THAT THERE REMAINS IN THE PROCEEDING NO GENUINE ISSUE AS TO ANY MATERIAL FACT, AND PETITIONER, WHO DULY MOVED FOR SUMMARY JUDGMENT, IS ENTITLED THERETO AS A MATTER OF LAW (Ct Ap Appx. pp 11, 15, 94 -129; also, pp 130 - 154; Ct Ap Tr. pp 25 - 46 and 75; pp 124 - 143 and 166 - 186; pp 144 - 165 and 194 - 207; and pp 222 - 231 with Appendix of Notice of Setting on Motion for New Trial).

RULE 14.1(b) AND RULE 29
DESIGNATION OF INTERESTED PARTIES

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98th Judicial District;
Hon. John K. Dietz, Judge
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GUIDE TO SELECTED ABBREVIATIONS USED IN PETITION

Abbreviation	Reference
Appx.	The appendix accompanying the immediate Petition in the Supreme Court of the United States.
Ct Ap Appx.	Volumes I and II of the Appendix to Brief of Appellant as filed in the Court of Appeals, Third District, Austin, Texas.
Ct Ap Tr.	The Transcript from the District Courts of Travis County, Texas as truncated by its Clerk and filed in the Court of Appeals, Third District, Austin, Texas.

OPINIONS BELOW

The Order giving rise to appellate jurisdiction subscribed by the District Court of Travis County, Texas on the 30th day of November, 1995, appears at Ct Ap Appx. pp A-25 - A-26 and A-35 - A-37, of the Appendix to the Petition for Writ of Mandamus. Accompanying such Order is the Order overruling Petitioner's Motion for New Trial (Ibid. pp A-38 - A-39) in addition to pertinent docket entries, orders and opinions reflecting the sequence and nature of the improprieties justifying the extraordinary relief sought by this Petition.

JURISDICTION

The immediate Petition invokes Title 28, United States Code, Section 1651, providing for the Supreme Court of the United States, or a Justice of such Supreme Court, to issue:

> "all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

The District Court unlawfully and improperly declined to exercise the jurisdiction authorized by Vernon's Ann. Tex. Const., Art. V, Sec. 8, and V.T.C.A. Government Code §§ 24.07 and 24.08 ; the Court of Appeals, Third District of Texas, has neglected to exercise its appellate or mandamus jurisdiction in behalf of Petitioner authorized by V.T.C.A. Government Code §§ 22.201(d), 22.220 and 22.221; and the Supreme Court of Texas has improvidently refrained from its jurisdiction provided by V.T.C.A. Government Code §§ 22.001 and 22.002, to

redress and mandate the redress of claims duly asserted by Petitioner, effectively limiting Petitioner's *recourse* to the jurisdiction attached to the Supreme Court of the United State by United States Code, Const. Art. III §§ 1 and 2; and Title 28, United States Code, Section 1651, in conjunction with the appellate jurisdiction vested in this Supreme Court by Title 28, United States Code, Sections 1257 and 1447(d).

The Order invoking appellate jurisdiction was entered on the 30th day of November, 1993 (Appx. pp A-25 - A-26 and A-35 - A-37). Petitioner filed a timely Notice of Appeal, but the Court of Appeals ruled on the 9th day of March, 1994, that the Order was interlocutory, and that such Court of Appeals did not have jurisdiction of the Appeal (Appx. pp A-28 - A-31). The Court of Appeals, also, declined on the 31st day of March, 1994, to issue a writ of mandamus compelling the judicial and magisterial remedies sought by Petitioner Appx. p. A-32). On the 20th day of April, 1994, the Supreme Court of Texas, similarly, refused Petitioner's duly submitted request for mandamus relief (Appx. pp A-33 - A-34).

On remand, the trial Court entered an Order under date of the 31st day of May, 1994 (Appx. pp A-35 - A-37), "clarifying" the previously referenced Order of the 30th day of November, 1993, ruling that the subject Order "was intended as a dismissal of this cause of action"... and "hereby dismisses this entire cause of action with prejudice..."

Petitioner properly reurged his motion for a new trial, which was denied by an Order entered on the 28th day of

June, 1994 (Appx. pp A-38 - A-39), and his appeal bond was filed, with proper notice. The Appeal was subsequently docketed as No. 03-94-00340-CV/No. 03-94-00053-CV in the Court of Appeals, Third Court of Appeals District of Texas, Austin, Texas (Appx. pp A-40 - A-44).

Attributable to the absence of relief via the Court of Appeals, Petitioner submitted an additional Petition to the Supreme Court of Texas, with Motion for Leave to File, in proper form seeking mandamus relief, which was acknowledged as having been filed on the 7th day of August, 1995, by the Clerk of such Court, John T. Adams, docketed as No. 95-0757 (Appx. p. A-45), which was overruled on the 14th day of September, 1995 (Appx. p. A-46 - A-47).

The Court of Appeals entered a Judgment and unpublished Per Curiam Opinion on the 11th day of October, 1995, No. 03-94-00340-CV, affirming the judgment of the trial Court (Appx. pp A-48 - A-53).

Petitioner filed a Motion for Rehearing in the Court of Appeals on the 23rd day of October, 1995 (Appx. p. A - 56), which was overruled on the 15th day of November, 1995 (Appx. p. A-55).

Petitioner duly submitted an Application for Writ of Error which was filed in the Supreme Court of Texas on the 29th day of November, 1995, Docket No. 95-1232 (Appx. p. A-56), and Petitioner's ancillary Motion under such docket number expressly requesting that the Supreme Court of Texas take judicial notice of the appellate records from the Court of Appeals in the proceeding being appealed as well as the directly related mandamus actions was

filed by the Clerk of the Supreme Court of Texas on the 12th day of December, 1995 (Appx. p. A-57).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

The Constitutional provisions, statutes and rules involved in the substantive proceeding are set forth in Part B of the Appendix to Petition for Writ of Mandamus served and submitted for filing herewith in conformity with U.S. Sup. Ct. Rule 14.1(f), 28 U.S.C.

Infringments by Defendants-Appellants below upon Petitioner's guaranties of due process and equal protection are rampant. United States Code, Const. Amend. XIV §§ 1 and 5.

The trial Court totally disregarded its jurisdiction vested by Vernon's Ann. Tex. Civ. St., art. 5221(b), Sections 14(b) and (h) and 14-A, as well as its Constitutional jurisdiction pursuant to Vernon's Ann. Tex. Const., Art. V, Sec. 8, and its enabling legislation codified as V.T.C.A. Government Code §§ 24.007 and 24.08. Similarly, the trial Court did not take cognizance of jurisdiction made applicable by the recent enactments comprising V.T.C.A. Civil Practice & Remedies Code §§ 103.001 - 106.003, inclusive, which legislation encompasses a waiver of sovereign immunity applicable to the facts attending the proceeding and adduced in the trial Court.

Still further, the trial Court did not give due credence to well established Federal standards creating actionable claims for violations of the civil rights of citizens and persons within the jurisdiction of the United States provided at Title 42, United States Code, Sections 1981, 1982, 1983, 2000e, 2000e-

2, 2000e-3, and 2000e-7. Petitioner's pleadings in the trial Court were in conformity with Vernon's Ann. Tex. Rules Civ. Proc., rules 45, 46, 47, 48, 49, 50, 51 and 63, notwithstanding the Order dismissing the action, and Vernon's Ann. Tex. Rules Civ. Proc., rule 169, provided the basis for the admissions complementing the affidavits justifying summary judgment for Petitioner pursuant to Vernon's Ann. Tex. Rules Civ. Proc., rule 166a.

The Court of Appeals, Third District, Austin, Texas, did not engage its patent jurisdiction to rectify the improper rulings, determinations and omissions by the trial Court contemplated by V.T.C.A. Government Code §§ 22.220(a) and (c) and 22.221(d), and the Supreme Court of Texas through the date of this Petition has inappropriately abstained from engaging its jurisdiction to rectify errors from below or mandate proper judicial proceedings by the inferior civil courts of the State of Texas under V.T.C.A. Government Code §§ 22.001(a), (b) and (d) and 22.002.

STATEMENT OF CASE

This action arises out of the mistaken adjudication dismissing Petitioner's claims for equitable relief in the trial Court (Ct Ap Appx. pp 156 - 157), and the failure of the Third Court of Appeals of Texas to direct compliance with applicable law, Court of Appeals No. 03-94-00340-CV). V.T.C.A. Government Code §§ 22.002 and 22.221(d).

The District Court action was initiated following harassment activities flowing out of the Lufkin, Texas Regional Office of Respondent Texas Employment Commission (Ct Ap Appx. pp 3 - 6; Ct Ap

Tr. pp 2 -6). The recognition of a correlation between (1) an unfounded and fraudulent Statement of Employer Account issued by such Respondent's employees at Lufkin, Texas as mailed to and served upon Petitioner at Livingston, Polk County, Texas and (2) a pattern of misfeasance, malfeasance and nonfeasance including harassment and involving unconstitutionally wrongful deprivation of Petitioner's privilege to practice law in the Courts of the State of Texas prompted amendment of such relator's trial Court pleadings effectively impleading Respondent State of Texas, State Bar of Texas and Karen Johnson, Executive Director of the State Bar of Texas, in addition to Robert G. Johnstone and R. D. Cooper as culpable employees of Respondent Texas Employment Commission.

The original pleading sought judicial review of Respondent Texas Employment Commission's unwarranted employment tax against Petitioner's business interests at Livingston, Texas. However, the amended pleadings sought plenary review and relief encompassing the full jurisdiction of the trial Court to redress wrongful conduct ex contractu as well as ex delicto. Vernon's Ann. Tex. Const., Art. V, Sec. 8; V.T.C.A. Government Code §§ 24.007 and 24.008.

Dismissal of the litigation by the trial Court was unconstitutional and violative of statute (Ct Ap Appx. p. 156, Ct Ap Tr. p. 214), and an Appeal was perfected to the Court of Appeals, Third Court of Appeals District of Texas, at Austin, Texas, on the 26th day of January, 1994 (Ct Ap Tr. pp 241 - 246), but the Court of Appeals did not implement the indicated remedy (Ct Ap No.

03-94-00053-CV, No. 03-94-00141-CV and No. 03-94-00340-CV) comprising an extraordinary irregularity. Consumers Union of the United States v Virginia State Bar and the Supreme Court of Virginia, 688 F.2d 218, certiorari denied 103 S.Ct. 3124 (1983), 462 U.S. 1137, 77 L.Ed.2d 1375.

After the case had been within the jurisdiction of the Court of Appeals, Third District of Texas, for nearly two years without discernible progression toward the indicated relief, Petitioner elected to renew his quest for mandamus relief from the highest civil court of the State of Texas, and his Motion for Leave to File Petition for Writ of Mandamus was docketed with the Supreme Court of Texas on the 7th day of August, 1995, as No.95-0757 (Appx. p. A-45). The Court of Appeals, ultimately, affirmed the trial Court(Appx. pp A-47 - A-52), and Petitioner's Motion for Rehearing was overruled (Appx. pp A-54 - A-55). Petitioner then timely submitted an Application for Writ of Error which was filed in the Supreme Court of Texas as No. 95-1232 (Appx. p. A-56).

Petitioner has contested his fraudulent disbarment by Respondent State Bar of Texas, alleged to have occurred on the 28th day of February, 1974, or thereabouts, in various forums and contexts, including Federal civil rights removal actions, over the years, and he resubmitted this contention through "Plaintiff's First Amended Original Petition" forwarded to the trial Court on the 24th day of February, 1993 (Ct Ap. Appx. pp 41 - 46, inclusive). Paragraph III of such Petition gave full notice to the Defendants named therein of the

Federal claims attached to Petitioner's pleadings as it states:

> "The entries of the described Statement of Employer Account, No. 01-956543-2, are incorrect and appear to be a product of fraudulent computer input in violation of Vernon's Ann. P. C. §§ 32.01, et seq., and 33.01; 18 U.S.C.A. § 1001; and 42 U.S.C.A. §§ 1981, 1982 and 1983, as the referenced business entity Dunbar Resources-Livingston, Inc., has not engaged employees or incurred employee wages for the interim as referenced by the attached Statement of Employer Account, No. 01-956543-02."

Such Federal claims were highlighted and further particularized by "Plaintiff's Third Amended Original Petition submitted to the trial Court on the 17th day of September, 1993 (Ct Ap Appx. pp 73 - 92, inclusive). However, the action was dismissed by an Order rendered under date of the 30th day of November, 1993 (Appx. pp A-25 - A-27).

The subject Federal claims were presented to the Court of Appeals, Third District of Texas, through a timely filed "Brief of Appellant and Petition for Writ of Mandamus" citing Federal Constitutional as well as statutory provision which are violated by the Order of dismissal entered by the trial Court (Ct. Ap No. 03-94-00053/No. 03-94-00141-CV). The described claims were repeated in the Brief of Appellant most recently submitted to the described Court of Appeals under the Appeal docketed as No. 03-94-00340-CV. However, the Court of

Appeals dismissed the initial Petition and remanded the Appeal (Appx. pp A-28 - A-31), and it affirmed the trial Court by its ruling on 11th day of October, 1995, consisting of a Judgment and unpublished Per Curiam Opinion (Appx. pp A-48 - A-53).

In Petitioner's Motion for Rehearing, he addressed the errors and misperceptions attached to the Court of Appeals' ruling (Appx. p. 54).

Petitioner noted that the first paragraph of the Opinion does not fully assess the breadth and effect of State Bar Respondents' misconduct associated with the refusal to reinstate Petitioner following his fraudulent conviction and disbarment.

The Opinion misreads, at its second paragraph, the Order on "Defendants' Robert G. Johnstone, R. D. Cooper, the State of Texas and the Texas Employment Commission's Plea to the Jurisdiction and Special Exceptions" as such Order, entered on 30th day of November, 1993, "DENIED" "Defendants' Plea to the Jurisdiction" (Appx. pp A-23 - A-26). Such jurisdiction was presumed. Thus, economic considerations dictated that such proceedings would not be itemized by Petitioner for inclusion in the Record on Appeal. Vernon's Ann. Tex. Rules Ap. Proc., Rules 50(f) and 53(e); Carruth v Valley Ready-Mix Concrete Co., 221 S.W.2d 584 (1949).

However, with reference to the Fourth paragraph of the Opinion, State Bar Repondents' maintained that the Order on "Defendants State Bar of Texas and Karen Johnson's Special Exceptions" was dispositive, and even though the conclusion did not appear sound from a

reading of such Order, it was necessary for Petitioner to designate such Order for inclusion in the appellate record based upon the issue joined (See Request for Preparation of Record and Statement of Facts at Appendix of Record to Brief of Appellant, Vol. II, p. A - 166: Ct. Ap. Appx. p. A - 166; Appx. pp A-58 - A-67).

Such Request for Statement of Facts directed to the Official Court Reporter sought: "The proceedings on Plaintiff's Motion for New Trial held herein on the 28th day of June, 1994" (Appx. pp A-62 - A-63), which proceedings included, as an exhibit, a copy of the Order on "Defendants' Special Exceptions," as drafted by Counsel for State Bar Respondents', as well as the contentions and arguments of the parties on Petitioner's Motion for New Trial and/or for Clarification of Order, which order was interpreted by Counsel for State Bar Respondents as dispositive (Appx. pp A-35 -A-37).

Referencing the fourth paragraph of the Opinion, and contrary to such recitations, Petitioner did designate, for inclusion, the subject Order of November 30, 1993 (Ct. Ap. Appx. p. A-168, item 11, Transcript pp 218 - 221). Another Order (Appx. pp A-25 - A-26), on this same date as several orders, expressly denies the contest of jurisdiction with respect to TEC Respondents, and, thus, jurisdiction of the trial Court over the action against TEC Respondents was not an issue on Appeal, and the Order which State Bar Respondents argue was dispositive was duly requested for inclusion in the appellate record (Ct Ap Appx. p. A-156);

Transcript p. 218; Appx. pp A-62-A-63). Thus, to the extent that the striking of the "Third Original Petition" was construed as a dismissal of the action, then the Statement of Facts requested by Petitioner was sufficiently inclusive to reflect the irregularities and Constitutional abuses encompassed by the dismissal.

Addressing p. 4 of the Opinion, at its second paragraph, State Bar Respondents' plea to the jurisdiction was based upon an improper construction of the sovereign immunity doctrine addressed by V.T.C.A. Civil Practice & Remedies Code § 104.001, et seq., as well as District of Columbia Court of Appeals v Feldman, 103 S.Ct. 1303 (1983), 460 U.S. 462, 75 L.Ed.2d 206; and Consumers Union of the United States v Virginia State Bar and the Supreme Court of Virginia, Supra.

The subject Federal claims were presented to the Supreme Court of Texas via a Motion for Leave to File and Petition for Writ of Mandamus docketed as No. 94-0324, similarly citing Federal Constitutional as well as statutory authorities which were contravened by the trial Court, and the nonfeasance of the Court of Appeals, but the motion for leave to file petition for writ of mandamus was overruled on the 20th day of April, 1994 (Appx. p. A-33).

The pertinent Federal claims were reiterated before the Supreme Court of Texas via another Motion for Leave to File and Petition for Writ of Mandamus filed therein on the 7th day of August, 1995 (Appx. pp A-45), which was overruled (Appx. p. A-46 - A-47).

Petitioner's duly and timely submitted Application for Writ of Error

in the Supreme Court of Texas repeated the Federal claims recited above as filed on the 29th day of November, 1995, docketed as No. 95-1232 (Appx. p. A-56).

ARGUMENT

I. JURISDICTION WAS PROPERLY INVOKED BELOW BY THE ORIGINAL PETITION FOR JUDICIAL REVIEW TO CONTEST AN IMPROPER ASSESSMENT UNDER THE TEXAS UNEMPLOYMENT COMPENSATION ACT.

"Plaintiff's Original Petition for Judicial Review" was filed in the trial Court on the 21st day of September, 1992, expressly invoking the Court's jurisdiction under the Texas Unemployment Compensation Act (Ct Ap Appx. pp 1 - 7; Ct Ap Tr. pp 2 - 6). Vernon's Ann. Tex. Civ. St., art. 5221(b), Sec. 14(b) and (h) and 14-A, subsequently repealed and codified under V.T.C.A. Labor Code (1993).

Respondent Texas Employment Commission entered a general appearance on the 19th day of October, 1992, represented by the Office of the Attorney General of Texas (Ct Ap Appx. pp 8 - 9; Ct Ap Tr. pp 7 - 8). Vernon's Ann. Tex. Rules Civ. Proc., rules 120 and 121.

Thus, the initial issues in the case were properly joined. Vernon's Ann. Tex. Const., Art. I, Secs. 16, 17 and 19 and Art. V, Sec. 8; Motorola, Inc. v Bullock, 586 S.W.2d 706 (3rd Dist. Austin 1979).

II. JURISDICTION OF THE TRIAL COURT EXTENDED TO REDRESS WRONGFUL CONDUCT COMMITTED BY STATE AGENCIES AND EMPLOYEES THROUGH THE FILING AND EFFECTIVE SERVICE OF PETITIONER'S AMENDED ORIGINAL PETITION.

"Plaintiff's First Amended Original

Petition" was filed below on the 26th day of February, 1993 (Ct Ap Appx. pp 41 - 46; Ct Ap Tr. pp 18 - 24). The impleaded Respondents Robert G. Johnstone, R. D. Cooper and the State of Texas appeared herein represented by Counsel for Respondent Texas Employment Commission, an agency of the State of Texas, each hereinafter referred to as Respondent and plurally as TEC Respondents, through an answer filed on the 12th day of March, 1993 (Ct Ap Appx. pp 47 - 48; Ct Ap Tr. pp 47- 48); and the impleaded Respondent State Bar of Texas, an agency of the State of Texas, hereinafter referred to along with Respondent Karen Johnson, its Executive Director, as Respondent and plurally as State Bar Respondents, appeared herein by filing an answer with the Court below on the 25th day of March, 1993 (Ct Ap Appx. pp 49 - 52; Ct Ap Tr. pp 49 - 52). Vernon's Ann. Tex. Rules Civ. Proc., rules 51 and 63.

The case was assigned to the docket of the Honorable Werner Jeane Meurer, Judge of the 98th Judicial District, Travis County, Texas, a Respondent herein, who has not taken any substantive action in the proceeding of record, or within the knowledge of Petitioner. (Ct Ap Appx. p. 10). United States v New York Telephone Co., 98 S.Ct. 364 (1962), 434 U.S. 159, 54 L.Ed.2d 376.

Each of the amended petitions filed below recognizes and denotes a correlation between the irregularities engaged against Petitioner by TEC Respondents, through representatives out of the Lufkin Regional Office, with a continuing pattern of tortuous conduct on the part of State Bar Respondents (Ct Ap Appx. pp A-41 - A-46 and A-53 - A-93; Ct

Ap Tr. pp 18 - 24 and 124 - 143).

The doctrine of sovereign immunity is not a license for a State agency to engage unreasonable abuses. The conduct of an officer of a sovereign is proper for redress in a suit for specific relief against the officer where his action is beyond the officer's statutory authority, and the legislature may constitutionally authorize a suit against the State itself entailing the payment of public funds from the State treasury. United States Code, Const. Amend. 14, § 5; Florida Department of State v Treasure Salvors, 102 S.Ct. 3304 (1982), 458 U.S. 670, 732 L.Ed.2d 1037.

III. JURISDICTION OF THE COURT BELOW TO REMEDY CIVIL RIGHTS ABUSES AS ENGAGED BY TRIAL COURT DEFENDANTS NEGATIVELY AFFECTING ONE OR MORE PARTIES IS EXPRESSLY PROVIDED BY STATE OF TEXAS AND FEDERAL CONSTITUTIONAL PROVISIONS AND LEGISLATIVE ENACTMENTS.

Each of Petitioner's amended petitions as duly served on each named Defendant below set forth the irregularity of the actions of TEC Respondents' Lufkin Tax Office in falsely assessing a liability for unemployment taxes against Petitioner's business interests at 1000 West Street, P. O. Box 862, Livingston, Polk County, Texas 77351. Such tactics extended to securing the Office of the Sheriff of Polk County, Texas to serve repetitious subpoenas on Petitioner without any reasonable basis in addition to continuous mailings of deficiency assessment notices to Petitioner's business address of P. O. Box 862, Livingston, Texas 77351 (Ct Ap Appx. pp 1- 7, p. 15, paragraph XXXIX, p.

32, paragraph XXXXII, pp 41 - 46 and pp 53 - 93; Ct Ap Tr. pp 18 - 24, 124 - 143, 166 - 186, paragraph I - III, inclusive). Vernon's Ann. Tex. Civ. St., art. 5221(b), Sec. 14(b) and (h) and 14-A; Florida Department of State v Treasure Salvors, Supra.

In contrast with the Original Petition, the amended petitions, at paragraph IV thereof, specify the joint character and effect of the misconduct engaged by TEC Respondents with the tortuous abuses covering a number of years by State Bar Respondents and requests equitable compensation in addition to declaratory and injunctive relief, at paragraph V, et seq. Title 42, United States Code, Sections 1981, 1982, 1983 and 2000e, 2000e-2, 2000e-3, and 2000e-7; V.T.C.A. Civil Practice & Remedies Code §§ 103.001, 103.002, 103.004, 103.005, 103.006, 103.007, 104.001, 104.002, 104.003, 104.0035, 104.004, 104.005, 104.006, 104.007, 104.008, 105.001, 105.002, 105.003 105.004, 106.001, 106.002 and 106.003; V.T.C.A. Government Code §§ 24.007 and 24.008; Wells v Hutchinson, 499 F. Supp. 174 (ED TX 1980); District of Columbia Court of Appeals v Feldman, Supra.; Consumers Union of the United States v Virginia State Bar and the Supreme Court of Virginia, Supra.

While the referenced State legislative enactments obviously cannot establish exclusive jurisdiction of Petitioner's claims in a Federal system, concurrent jurisdiction with the United States District Court is clearly apparent as Congress has never preempted the realm of civil rights remedies. Coastal States Trading, Inc. v Shell Pipeline Corp., 573

F. Supp. 1415 (S.D. TX 1983); Shell Pipeline Corp. v Coastal States Trading, Inc., 788 S.W.2d 837 (1st Dist. Houston 1990), App. Writ Err. Denied; United States v Haley, 83 S.Ct. 11 (1962), 71 U.S. 19, 9 L.Ed. 2d 1.

IV. THE PROPOSITIONS OF PETITIONER'S REQUEST FOR ADMISSIONS AS DULY SERVED ON EACH TRIAL COURT DEFENDANT WERE EFFECTIVELY ADMITTED BY OPERATION OF THE RULES OF COURT.

Petitioner is entitled to an adjudication of sanctions under Vernon's Ann. Tex. Rules Civ. Proc., rule 169, in conjunction with his Rule 169 requests for admissions served on both TEC and State Bar Respondents herein on the 19th day of March, 1993 (Ct Ap Appx. pp A-16 - A-40; Ct Ap Tr. pp A-25 - A-46, A-53 - A-75), along with interrogatories pursuant to Vernon's Ann. Tex. Rules Civ. Proc., rule 168, which items instructed the parties to respond and answer the respective discovery items within thirty (30) days following service thereof.

The suggested adjudication should specify that "Plaintiff's Original Rule 169 Request for Admissions" as served on Respondent State Bar of Texas be deemed admitted for the reason that such party's response fails to deny or object to the respective propositions of the subject Request for Admissions as required by Vernon's Ann. Tex. Rules Civ. Proc., rule 169.1, comprising an admission of each respective proposition as such rule provides:

> "The matter is admitted... unless within thirty (30) days after service of the request... the party to whom the request is directed

> serves upon the party requesting the admission a written answer or objection addressed to the matter, **signed by the party or his attorney...** (emphasis added). A party who considers that a matter of which an admission is requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of paragraph 3 of Rule 215, deny the matter or set forth reasons why he cannot admit or deny it."

Reyes v International Metals Supply Co., 666 S.W.2d 622 (1st Dist. Houston 1984).

Respondent State Bar of Texas declined to extend an authorized signature to any of its drafted responses on "Plaintiff's Original Rule 169 Request for Admissions", and it elected, further, not to utilize any language of adoption or incorporation by reference with respect to any response on the Request for Admissions. See Gilbert v General Motors Corporation, 133 F.2d 997 (2nd Cir. 1943), certiorari denied 63 S.Ct. 103 (1943), 319 U.S. 743, 87 L.Ed. 1700.

The responses of Respondent State of Texas to Request for Admissions numbered IV, V, VI, VII, VIII, IX, X, XI, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XXI, XXII, XXIII, XXIV, XXV, XXVI, XXVII, XXVIII, XXIX, XXXIV and XXXIX (Ct Ap Appx. pp A-17 - A-30 and 39)) are clearly insufficient as discovery responses. A party is obligated to answer a request for admissions if the means of securing the information sought are reasonably within its power even if he has no personal knowledge of the facts, and the

party seeking the admission is acquainted with the facts. United States Fire Insurance Co. v Maness, 773 S.W.2d 748 (1st Dist. Houston 1989), error refused, rehearing of writ overruled. This is particularly true where the party served must already know the truth or falsity of the subject proposition, or being presently without such knowledge, has a duty to inform himself. Stewart v Vaughn, 504 S.W.2d 600 (14th Dist. Houston 1974).

The unsigned drafts of responses by Respondent State Bar of Texas to "Plaintiff's Original Request for Admissions" numbered II, IV, V, VI, VII, VIII, IX, X, XI, XIII, XIV, XV, XVI, XVII, XVIII, XXI, XXIV, XXV, XXVI, XXVII, XXX, XXXI, XXXII, XXXIII, XXXV, XXXVI, XXXVII, XXXVIII, XXXIX, XXXX, XXXXI and XXXXII (Ct Ap Appx. pp A-17 - A-32 and A-38 - A-40) are, additionally, insufficient as responses to the Request for Admissions for the reason that such Respondent is obligated to answer each statement of a request for admissions where the means of securing the information are reasonably within its power whether or not it has personal knowledge of the facts, and unaffected by the serving party's familiarity, or lack thereof, with the subject information. This principle is uniquely applicable to the immediate facts where Respondent State Bar of Texas, as an agency of the State of Texas when the pertinent records were accumulated, and Respondent State of Texas are the custodians of the subject original records from which the information sought is to be derived (Ct Ap Appx. pp A-130 - A-154). Vernon's Ann. Tex. Rules Civ. Proc., rule 208.

The unsigned draft of responses by Respondent State Bar of Texas to Petitioner's Request for Admissions numbered XIX, XXIV, XXV and XXVI (Ct Ap Appx. pp A-143 - A-144 and pp A-146 -A-147) are comparably insufficient to the extent that reliance is upon the grounds that the information sought is controversial or may require a determination by a court. The party's option would obviously have been to deny the proposition if it controverts the statement because it deems the proposition false. Vernon's Ann. Tex. Rules Civ. Proc., rule 169.1; Kansas City Title Insurance Co. v Atlas Life Insurance Co., 336 S.W.2d 204 (6th Dist. Texarkana 1960).

Petitioner submits, also, that both TEC and State Bar Respondents have an, alternative, duty to supplement their answers to Petitioner's Rule 168 and 169 discovery items served on such parties. The subject conduct by each served party is grossly incomplete and disregardful for the scope of the prescribed discovery as defined by Vernon's Ann. Tex. Rules Civ. Proc., rules 168.2, 168.5 and 215.1.b.3.b (District Court Docket Sheet entries of 03-31-1993 and 04-22-1993, p. 3). Tharp v Blackwell, 570 S.W.2d 154 (6th Dist. Texarkana 1978).

The unexecuted drafts by Respondent State Bar of Texas to "Plaintiff's Rule 168 Interrogatories" are inherently evasive as such Respondent declines to extend a signature to any answers to the Interrogatories herein, such party elected not to incorporate or adopt the draft of answers by an express or legally obligatory reference.

With respect to Interrogatories

numbered IV, V, VI, VII, VIII, IX, X, XXII, XIV, XX, XXI, XXII, XXIII and XXIX (Ct Ap Appx. pp A-17 - A-27 and A-38 -A-40), an objection that the party has no personal knowledge of the content of the interrogatories is insufficient. However, to the extent that the party purports for the utterance to entail a binding answer, then such lack of knowledge would have sufficed, if properly endorsed. Makry v University of Texas Health Science Center at Dallas, 529 S.W.2d 802 (4th Dist. Dallas 1976), ref., n.r.e..

Pertinent to Interrogatory No. XXIX (Ct Ap Appx. p. A-27), an objection on the ground that an answer will require research of the laws of all states is not sustainable in light of the concern of the immediate litigation involving the laws of the State of Texas and related Federal jurisdiction which the Court may properly note is in the "conflict of laws" domain. 12 Tex Jur 3d Conflict of Laws §§ 1 - 29, pp 593 - 645; Vernon's Ann. Tex. Rules Evid. Rule 201(b); Lowe v Texas Tech University, 540 S.W.2d 297 (Sup. 1976).

Pertinent to the approach of TEC Respondents, Petitioner's discovery items are obviously calculated to produce information supportive of "Plaintiff's First Amended Original Petition" below, as well as the subsequent amendments thereto, and an objection by a party based on irrelevancy, or that the items are not likely to lead to the discovery of relevant, material or admissible evidence is an insufficient basis for a refusal to answer. Braden v Downey, 811 S.W.2d 922 (Sup. 1991).

Also, any argument by TEC

Respondents that the information sought is not in the possession of such parties is false as diligent inquiry among such TEC and State Bar Respondents and their agencies, even in the absence of active collusion, must reveal, and the subject inquiry is not vague and ambiguous, but, to the contrary, the inquiry is clear and concise. Lack of knowledge in each instance would suffice as an answer, but it is not a proper objection (Ct Ap Appx. pp A-130 - A-154). Braden v Downey, Supra.

Discovery is not objectionable merely because of the quantity and detailed character thereof where the inquiries are not egregiously burdensome or oppressive. Ibid.

V. DISMISSAL OF THE MULTIPLE CLAIMS ASSERTED BY PETITIONER'S AMENDED PLEADINGS IN THE TRIAL COURT IS CONTRARY TO ESTABLISHED LAW AND PRECEDENT.

"Plaintiff's Third Amended Original Petition" was filed in response to the Court's Order precluding Petitioner's representation of a corporate entity as an unlicensed attorney, in addition to other voluntary additions and substitutions by Petitioner (Ct Ap Appx. pp A-73 - A-93; Ct Ap Tr. p. 187 and pp 166 - 186). Vernon's Ann. Tex. Rules Civ. Proc., rule 63. State Bar Respondents' exception to Petitioner's standing to sue such Respondent was not sustainable by the Presiding Judge (Ct Ap Appx. p. A-155; Ct Ap Tr. pp 188 - 189). Florida Department of State v Treasure Salvors, Inc., Supra., on remand 689 F.2d 1254 (5th Cir. 1982); District of Columbia Court of Appeals v Feldman, Supra.; Consumers Union of the United

States v Virginia State Bar and the Supreme Court of Virginia, Supra.

Also, any State Bar Respondents' exception to the lack of specificity with respect to compensation requested by the Petition below was not sustainable by the Presiding Judge as Petitioner displayed that the Petition sought equitable compensation which is inherently incapable of unequivocal liquidation prior to a prerequisite accounting or computation. Southwest Weather Research, Inc. v Duncan, 319 S.W.2d 417 (8th Dist. El Paso 1959), affirmed 327 S.W.2d 940 (TX 1959); Wells v Hutchinson, Supra.

It is incontestable that Petitioner complied timely with the Court's Order of the 18th day of August, 1993, by submitting "Plaintiffs' Second Amended Original Petition" prior to the deadline set by the Court of August 27, 1993, which Amended Petition was duly filed by the Office of the Clerk of the District Court of Travis County, Texas prior to the 27th day of August, 1993 (Ct Ap Appx. pp A-53 - A-72; Ct Ap Tr. pp 124 -143).

Petitioner emphasizes at this juncture that neither "Plaintiffs' Second Amended Original Petition" nor any pleading filed by Petitioner herein alleges that the State Bar made libelous representations regarding Petitioner on or about July 31, 1989, but the allegation as properly pleaded is that the subject "libelous misrepresentations" reached a certain magnitude on or about July 31, 1989, and "Plaintiff's Third Amended Original Petition" merely further correlated the subject allegations at paragraph VI of the Petition with the preceding paragraphs which itemized the pertinent libel and accompanying

misconduct attributable to State Bar Respondents (Ct Ap Appx. pp A-76 - A-90).

The above described "Plaintiff's Third Amended Original Petition" was submitted in conformity with the Order of Judge John K. Dietz rendered on the 16th day of September, 1993 (Ct Ap Appx. p. A-155; Ct Ap Tr. p. 187), directing, in spite of the Motion for Leave to Appear filed preliminary to the Original Petition (Ct Ap Tr. p. 2), that Petitioner Elijah W. Ratcliff refrain from appearing to represent a corporate entity as an unlicensed attorney. Such pleading, setting forth, unequivocally, singular representation of Petitioner and his joint venture interests, Pro Se, was duly filed by the Office of the Clerk of the District Court of Travis County, Texas prior to the 30 day deadline set herein by Judge Dietz in his Order rendered on the 16th day of September, 1993 (Ct Ap Appx. pp A-73 - A-93; Ct Ap Tr. pp 166 - 186). Vernon's Ann. Tex. Rules Civ. Proc., rule 63.

Petitioner's trial Court pleadings comply with the requirements of the Texas rules of court, and particularly Vernon's Ann. Tex. Rules Civ. Proc., rules 45 -51, inclusive, incontestably, as currently amended. District of Columbia Court of Appeals v Feldman, Supra.; Consumers Union of the United States v Virginia State Bar and the Supreme Court of Virginia, Supra.

As Petitioner's pleadings set forth one or more claims upon which equitable recovery is proper against all trial Court Defendants, costs in the proceeding should appropriately be assessed against such Respondents. Vernon's Ann. Tex. Rules Civ. Proc., rule 131.

VI. THE WRIT OF MANDAMUS DIRECTING SUMMARY JUDGMENT FOR PETITIONER IS PROPER AS THE EVIDENCE ADDUCED ESTABLISHES THAT THERE REMAINS IN THE PROCEEDING NO GENUINE ISSUE AS TO ANY MATERIAL FACT, AND PETITIONER, WHO DULY MOVED FOR SUMMARY JUDGMENT, IS ENTITLED THERETO AS A MATTER OF LAW.

Petitioner, Pro Se, moved the trial Court for a summary judgment upon the claim pleaded via amended petition filed below (Ct Ap Appx. pp A-41 - A-46 and A-53 - A-93; Ct Ap Tr. pp 18 -24, 124-143 and 166 - 186), and in support of such Motion related to the Court that such pleadings were duly filed and served herein setting forth a cause of action conforming to Vernon's Ann. Tex. Civ. St., art. 5221(b), Sec. 14(b) and (h) and 14-A, and Title 42, United States Code, Sections 1991, 1982 and 1983. Vernon's Ann. Tex. Const., Art. V, Sec. 8; V.T.C.A. Government Code §§ 24.007 and 24.008.

The pleadings as filed below in conjunction with (1) certain admissions of TEC and State Bar Respondents by operation of Vernon's Ann. Tex. Rules Civ. Proc., rule 169, with respect to a Request for Admissions duly served on such Respondents by Petitioner, Pro Se, as filed below more than thirty (30) days prior to service of the subject Motion (Ct Ap Appx. pp A-16 - A-40); (2) the affidavits attached thereto and incorporated therein (Ct Ap Appx. pp A-98 - A-129; and (3) the record in its entirety in the trial Court establish that there is in the cause no genuine issue as to any material fact, and Petitioner, the Movant, is entitled to a

summary Judgment as a matter of law as authorized by Vernon's Ann Tex. Rules Civ. Proc., rule 166a.a; U. S. Sup. Ct. Rule 43, 28 U.S.C.

This Court should find that the trial Court's jurisdiction attached with respect to the relief sought by Petitioner inclusive of, but not limited to, statutory authorizations adopted by the sovereign State of Texas, to wit:

(1) a remedy and recoverable damages for Petitioner as a person wrongfully imprisoned pertinent to V.T.C.A. Civil Practice & Remedies Code § 103.001, et seq. (Ct Ap Appx. pp a-17 -A-20, paragraphs IV - XI and XII - XV, pp A-73 - A-93, pp 100- 103, Affidavit paragraphs III - X and pp 118 - 120, Affidavit paragraphs III - VII; Ct Ap Tr. pp 53 - 75, paragraphs IV - XI and XII - XV, pp 144 - 165, Affidavit paragraphs III - X, inclusive; and pp 194 - 207, Affidavit paragraphs III - VII, inclusive);

(2) Vicarious State liability arising out of negligence in lieu of State employees and liability arising out of deprivation of rights and privileges secured by laws of the State encompassing the wrongful conduct of TEC and State Bar Respondents herein under V.T.C.A. Civil Practice & Remedies Code § 104.001, et seq. (Ct Ap Appx. Ibid.; Ct Ap Tr. Ibid.);

(3) an action to recover fees, expenses and attorney's fees arising out of the frivolous claims of State agencies pursuant to V.T.C.A. Civil Practice & Remedies Code § 105.001, et seq. (Ct Ap Appx. pp A-30 - A-33, paragraphs XXXIX - XXXXII, p. 96 [p. 5, paragraph (3)] and pp A-110 - A-112, Affidavit paragraphs

XXIV-XXVI; Ct Ap Tr. pp 53 - 75, paragraphs XXXIX -XXXXII, inclusive; and pp 144 -165 [p. 5, paragraph (3)], and Affidavit paragraphs XXIV - XXVI, inclusive), and

(4) the recovery of compensation arising out of discrimination by TEC and State Bar Respondents against Petitioner because of race as proscribed by V.T.C.A. Civil Practice & Remedies Code § 106.001, et seq., (Ct Ap Appx. pp A-16 - A-40, paragraphs IV -XXXXVII, pp 99 - 115, Affidavit paragraphs II - XXV; Ct Ap Tr. pp 53 - 75, paragraphs IV -XXXXVII, inclusive, pp 144 - 165, Affidavit paragraphs II - XXXII, inclusive, pp 194 - 207, Affidavit paragraphs II -XXV, inclusive). Vernon's Ann Tex. Rules Civ. Proc., rule 48; Moore v Rice, 80 S.W.2d 451 (11th Dist. Eastland 1935); International Pipeline Systems, Ltd. v M. M. White & Associates, Inc., 831 S.W.2d 444 (14th Dist. Houston 1992).

Elongated details of the cause of action are not inherently essential so long as fair notice of the conduct complained of is communicated. Vernon's Ann Tex. Rules Civ. Proc., rules 45.b and 47.a. Thus, paragraph IV of the amended Petition was not required to specify each act of the parties which contributed to a given claim under such Petition.

Petitioner's discovery efforts giving rise to undocumented utterances that the information elicited was not easily available to the parties, if deemed properly endorsed, adduced that such parties were given fair notice by Petitioner's pleadings, as served, of the conduct which they must defend, but such parties elected to engage an insufficient

and less than reasonable research effort comprising an evasive response, calculated to circumvent the operation of Rules 169 and 215 of the Texas Rules of Civil Procedure (Ct Ap Appx. pp A-16 -A-40, also, pp 51 - 51, paragraphs II- V; Ct Ap Tr. pp 53 - 75). Vernon's Ann. Tex. Rules Civ. Proc., rules 169 and 215.4; United States Fire Insurance Company v Maness, Supra.

Neither TEC Respondents nor State Bar Respondents have offered an argument that they would have responded more intelligently or informatively to additionally prolonged pleadings than they have to extensive discovery.

Any objection that Petitioner has failed to enumerate specific injunctive and declaratory relief to which he is entitled is not a proper objection, and it is in fact proscribed by Rule 45(b) providing:

> "...That an allegation be evidentiary or be of a legal conclusion shall not be grounds for objection when fair notice is given by the allegations as a whole..."

To the extent that damages are unliquidated, Vernon's Ann. Tex. Rules Civ. Proc., rule 47.b, is satisfied by the contents at paragraph IV of the amended Petition relating:

> "The activities and misconduct of Defendants as described above have taken the form of infringements... justifying equitable compensation from the governmental Defendants in an amount

observed to exceed the minimal jurisdictional limitations of this Court..."

A party does not create a genuine issue as to a material fact merely by stating such a premise, particularly in the absence of a notorial act supporting the assertion (Ct Ap Appx. pp A-41 -A-52). Jeffrey v Larry Plotnick Co., Inc., 532 S.W.2d 99 (5th Dist. Dallas 1975).

The information presented by Petitioner's Affidavit (Ct Ap Appx. pp A-99 - A-115; Ct Ap Tr. pp 151 - 165) as well as the Affidavit of Louise D. Fleeks (Ct Ap Appx. pp A-116 - A-129; Ct Ap Tr. pp 194 - 207) derived from elemental facts accessible from the subject Respondents' records and files reviewed by Petitioner and other interested parties over the years, and to the extent that such Respondents cannot refute such facts presently, it is incumbent upon them to indicate the reason for such inability and to suggest how, if ever, they will controvert the subject factual propositions and statements.

Merely stating that the Affidavit of Petitioner or that of the witness Louise D. Fleeks is defective, or that such evidence is not clear, positive, direct, credible, or free from contradiction does not create such infirmities in the subject items, but the notorious truth of the contents of each affidavit is the actual inhibition to a traversing affidavit.

The tenor of Respondent State Bar's strategy is that its Counsel seek the path of least resistance whereas Rules 168 and 169 coupled with Rule 215 require a greater effort to acquire and relate

information uniquely and unexceptionably available to a party served with Rule 168 interrogatories and Rule 169 requests for admissions, if such party elects to avoid sanctions and the operation of law to the manuever. Vernon's Ann. Tex. Rules Civ. Proc., Rules 168, 169 and 215; State v Lowry, 802 S.W.2d 669 (Sup. 1991).

Focusing at this point on jurisdiction uniquely triggered by TEC Respondents, the notice of assessment in the form of Statement of Employer Account No. 01-956543-2 was made "prima facie evidence of the contents thereof" by Vernon's Ann. Civ. St., art. 5221b, Sec. 14(b). However, such presumption is overcome when its contents are contested under oath setting forth the facts (1) that the Statement is incorrect; (2) that the interested Taxpayer has duly made written and oral requests for an explanation of the Statement's basis; and (3) that the subject agency has declined, and continues to decline, to furnish the Taxpayer, Petitioner, a basis for the Statement's determination. Walker v Johnston, 236 S.W.2d 534 (4th Dist. San Antonio 1951). Thus, to avoid summary judgment, such Respondents were required to provide proper summary judgment evidence disputing the proof relied upon by Petitioner, Pro Se, and such counter proof has not been adduced, presented, evoked or reified in the proceeding. State v Lowry, Supra. 1991).

CONCLUSION:

The Supreme Court of United States should issue the Writ of Mandamus ordering that the dismissal of the proceedings below by a Presiding Judge in the District Court of Travis County, Texas be reversed for the reasons set

forth in the foregoing Petition for Writ of Mandamus. This Court's ruling should instruct an order directed in gross that the District Courts of Travis County, Texas render Judgment for Petitioner consistent with the relief urged by this Petition for Writ of Mandamus, adopted by the ruling of this Court. If any meaningful factual contest arises pertinent to Petitioner's presentation of the facts and record, it appears proper to direct the Clerk of the District Courts, the Honorable Amalia Rodriguez-Mendoza, a Respondent herein, to furnish the record of relevant trial Court proceedings essential for the solicited appellate review as duly and timely requested preliminary to proceedings in the Court of Appeals (Ct Ap Appx. pp A-166 - A-172, inclusive; Appx. pp A- 58-A-67). V.T.C.A. Government Code §§ 22.001(a) and (d) and 22.002(a); Title 28, United States Code, Sections 1257, 1447(d) and 1651; Wolters v Wright, 623 S.W.2d 301 (Sup. 1981); United States v Haley, Supra.

Respectfully submitted this 28th day of June, 1996.

_____

PETITIONER, PRO SE

Elijah W. Ratcliff,
Consultant
P. O. Box 862
Livingston, Texas 77351
Ph. 409 327-7108

NO._____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

IN RE ELIJAH W. RATCLIFF, ETC.,

PETITIONER

ON PETITION FOR WRIT OF MANDAMUS

APPENDIX TO PETITION FOR WRIT OF MANDAMUS

TO THE SUPREME COURT OF TEXAS

==========

Elijah W. Ratcliff,
Consultant
P. O. Box 862
Livingston, Texas 77351
Ph. 409 327-7108

==========

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CIV205
T R A V I S C 0 U N T Y OCTOBER 6, 1992
DOCKET DETAIL DISTRICT
COURT MANAGEMENT SYSTEM TIME: 10:28

CAUSE NUMBER : 9213523
CAUSE STATUS : PENDING
ORIG. FILING ; 09/21/92
TYPE OF SUIT : JUDICIAL REVIEW
COURT ASSIGN ; 98th District Court
JURY FEE PAID: NO

>>>>>I N V 0 L V E D P A R T I E S <<<<<

TYPE:
>>> PLAINTIFF
P01: DUNBAR RESOURCES-LIVINGSTON, INC.
PA01; DUNBAR RESOURCES-LIVINGSTON,
INC., PRO SE
P.O. BOX 862
LIVINGSTON, TEXAS 77351

>>> DEFENDANT
D01 : TEXAS EXPLOYMENT COMMISSION

>>> OTHER INVOLVED
001 : ELIJAH W. RATCLIFF PRO SE

>>> I S S U A N C E / S E R V I C E <<<

ISS/FILE DATE	SRV/RTN DATE	S B	P B	CLRK INIT	SEQ
DESCRIPTION OF SERVICE			NUM 092292	JOHN Citation	
Issued & Service (Precinct5) TEXAS EMPLOYMENT COMMISSION BY DELIVERY TO ITS CHAIRMAN, OR OTHER AUTHORIZED OFFICIAL TEC BUILDING AUSTIN, TRAVIS COUNTY, TEXAS 78778					001
093092	092492			JOHN	

Citation Executed
Texas Employment Commission

>>>>>>>>>>> P L E A D I N G S <<<<<<<<<<<

FILED DATE	CLRK INIT
DESCRIPTION OF PLEADINGS	
092192	JOHN
original Petition	
092192	JOHN
Motion for Leave to Appear	

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  CPT014                          Basic Paper
Screen OCTOBER 12, 1992

  Dept: C5                      (09/24/92 CLRK
  09/24/92 ROSPRI)
  Cause: 9213523                 bpn: 885156
  Type; CITS- Assgn: 478 = B.Aikman  -9-
  Court: D 098                     County:
  TRAVIS              Last action: RPER 0
/24/92
  Plntff: DUNBAR-RESOURCES-LIVINGSTON,IN
Defndt: TEXAS-EMPLOYMENT-COMMISSION

  Svc name: TEXAS EMPLOYMENT COMMISSION
agent:
   address:                 TEC BUILDING
AUSTIN, TX 78701
          (number) (street name)
(apt)  (city, state)              (zip)
   phone/s:
map:

  T   I   Issued: 09/22/92   Recd:
09/24/92 08:35    Expires;

  P.Atty:
  Rtrn: name DUNBAR RESOURCES-
  LIVINGSTON,IN bus
      ]  Address P 0 BOX-862 LIVINGSTON,
TX-77351

   Fees: tot 0.00    nc/bd - recd 0.00
bal 0-00 (last ck: PD-N-CRT
  Other: tot                     recd
  bal


  LABELS         NEXT(NO.,TYPE) 885156
BPN UPDATE?(Y/N)       XMIT
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P 425 051 146
Receipt for
Certified Mail
No Insurance Coverage
Provided

Do not use for
International Mail

(See Reverse)
Sent to:
General Counsel
State Bar of Texas
Austin, Texas 78711

Postage $ .52
Certified Fee 1.00
Special
Delivery Fee
Restricted
Delivery Fee
Return Receipt
Showing to Whom
& Date Delivered
Return Receipt
Showing to Whom,
Date, and
Addressee's
Address
TOTAL Postage &
Fees

Postmark or Date

February 24, 1993

P 425 051 148
Receipt for
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No Insurance
Coverage Provided

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International Mail

(See Reverse)
Sent to:
Dan Morales, Atty
P. O. Box 12548
Austin, TX 78711-
2548

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Special
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Delivery Fee
Return Receipt
Showing to Whom
& Date Delivered
Return Receipt
Showing to Whom,
Date and
Addressee's
Address
TOTAL Postage &
Fees

Postmark or Date

February 24, 1993

ELIJAH W. RATCLIFF,
CONSULTANT

1000 West Street
P. O. Box 862
Livingston, Texas 77351-0862
Ph. 409 327-7108

February 23, 1993

Amalia Rodriguez-Mendoza
District Clerk
Travis County Courthouse
P. O. Box 1748
Austin, Texas 78767

Re: Dunbar Resources, etc.
VS
Texas Employment Commission, et al.
No. 92-13523
District Court
Travis County, Texas

Dear Madam:

Enclosed please find Plaintiffs' Original Petition for filing in the above entitled and numbered cause as currently served on the subject parties.

A stamped reply envelope is submitted herewith to facilitate acknowledgment.

Yours truly,

Elijah W. Ratcliff,

Encl: (1 reply envelope)

cc: Hon. Dan Morales,
Attorney General of Texas

General Counsel
State Bar of Texas

NO. 92-13,523

ELIJAH W. RATCLIFF, INDIVIDUALLY, AND ELIJAH W. RATCLIFF, EX RELATIONE DUNBAR RESOURCES-LIVINGSTON, INC., PLAINTIFFS	IN THE DISTRICT COURTS OF TRAVIS COUNTY, TEXAS 98TH JUDICIAL DISTRICT
vs	
ROBERT C. JOHNSTONE; R. D. COOPER; THE STATE OF TEXAS; THE STATE BAR OF TEXAS, AN AGENCY OF THE STATE OF TEXAS; AND THE TEXAS EMPLOYMENT COMMISSION, AN AGENCY OF THE STATE OF TEXAS, DEFENDANTS	

PLAINTIFF'S FIRST AMENDED
ORIGINAL PETITION

TO THE SAID HONORABLE COURT:

Elijah W. Ratcliff, individually and as a fiduciary and a substantial interest holder in Dunbar Resources-Livingston, Inc., an entity doing business at 1000 West Street in Livingston, Polk County, Texas, each of which may be served at P. O. Box 862 in Livingston, Polk County, Texas 77351 in the instant proceeding, hereinafter referred to as Plaintiffs, hereby contest and deny liability attributed to such parties by a certain Statement of Employer Account issued by the Texas Employment Commission arising out of its Tax Department at Lufkin, Texas, referencing Texas Employment Account No. 01-956543-2, and alleging an

amount due and owing, by Plaintiffs, and such Plaintiffs seek further ...

Filed in The District Court of Travis County, Texas
FEB 2 6 1992 at 11:00 A. M.
Amalia Rodriguez-Mendoza, Clerk

AMALIA RODRIGUEZ-MENDOZA
DISTRICT CLERK

TRAVIS COUNTY COURTHOUSE, THIRD FLOOR

March 8, 1993

Elijah W. Ratcliff
1000 West Street
P.O. Box 862
Livingston, Texas 77351-0862

Mr. Ratcliff,

Enclosed you will find a copy of the letter you sent for filing on March 8th, it is my understanding that you are requesting service on the other defendants in this suit. If so, there will be a fee of $48.00 per defendant charge.

Please resubmit your request with the proper fees and we will honor your want for service. Attached is a copy of the docket sheet for this case, in it you can see that there are a total of 5 defendants. This docket sheet shows the defendants as a D01, D02... etc..

Once you resubmit this letter to us, we can serve the remaining parties.

If you have any questions, please call me.

Thank you

John Paul Compton, Deputy
Travis County
District Clerk's Office

P.O. BOX 1745 AUSTIN, TEXAS 78767
(512) 473-9457

ELIJAH W. RATCLIFF,
CONSULTANT

1000 West Street
P. O. Box 862
Livingston, Texas 77351-0862
Ph. 409 327-7108

March 6, 1993

Amalia Rodriguez-Mendoza
District Clerk
Travis County Courthouse
P. O. Box 1748
Austin, Texas 78767

Re: Dunbar Resources, etc.
vs
Texas Employment Commission, et al.
No. 92-13523
District Court
Travis County, Texas

Dear Madam:

A count of the copies of the Amended Pleadings returned to me by you suggests that the Secretary of the State Bar of Texas or its General Counsel was not cited and served as sought by such pleadings. Duplicate copies of such pleadings are returned, herewith, and your courtesy in clarifying the situation is requested.

A stamped reply envelope is submitted herewith to facilitate this request.

Yours truly,

Elijah W. Ratcliff,

Enclosures

Filed in The District Court
of Travis County, Texas

MAR 0 8 1993
at 10:10 A. M.

AMALIA RODRIEGUEZ-MENDOZA, DISTRICT CLERK
TRAVIS COUNTY, TEXAS

Receipt for $48.00

Cause No. 9213523 Receipt No. 235191

PAID BY DUNBAR GROCERY-WASHATERIA
MARCH 10, 1993
PAYMENT FOR: CITATION-ISS & SERVICE
COURT: 098
AMOUNT RECEIVED: 48.00
PAYMENT BY: CHECK
RECEIVED BY: JOHN COMPTON TIME: 09:27

Cause No- 9213523

C I T A T I O N

T H E S T A T E O F T E X A S

DUNBAR RESOURCES-LIVINGSTON, INC.
Plaintiff Plaintiff
and ELIJAH W. RATCLIFF, Relator

vs

ROBERT G. JOHNSTONE. R.D. COOPER, THE STATE OF TEXAS, THE STATE BAR OF TEXAS AND THE TEXAS EMPLOYMENT COMMISSION
Defendants

TO: THE STATE BAR OF TEXAS

by DELIVERY To ITS SECRETARY OR ITS GENERAL COUNSEL
AUSTIN, TEXAS 78701

Defendant, in the above styled and numbered cause:

YOU HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file a writtten answer with the clerk who issued this citation by 10:00 A. M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

Attached is a copy of the PLAINTIFF'S FIRST AMENDED ORIGINAL PETITION
of the PLAINTIFF In the above styled and numbered cause, which was filed on the 26th day of February, 1993, in the 98th

Judicial District Court of Travis County, Austin, Texas.

ISSUED AND GIVEN UNDER MY HAND AND SEAL of said Court at office, this the 10th day of March, 1993.

AMALIA RODRIGUEZ-MENDOZA
TRAVIS COUNTY
DISTRICT CLERK
Travis County Courthouse
1000 Guadalupe,
P.O. Box 1748
Austin, Texas

By s//John Compton
JOHN COMPTON, Deputy

REQUESTED BY: DUNBAR RESOURCES-
LIVINGSTON, INC. PR
P. O. BOX 862
LIVINGSTON, TEXAS 77351

- - - - - - - - - -R E T U R N- - - - - - - -

Came to hand on the 10th day of March, 1993, at 3:03 o'clock P. M. and executed at 144 Colorado within the County of Travis on the 12th day of March, 1993, at 10:40 o'clock A. M., by delivering to the within named The State Bar of Texas by delivery to Jack Lockridge, each in person, a true copy of this together with the accompanying pleading, having first attached such copy of such citation to such copy of pleading and endorsed on such copy of citation the date of delivery.

Service Fee:$ BRUCE ELFANT
CONSTABLE PRECINCT # 5

TRAVIS COUNTY, TEXAS
Sworn to and subscribed this the
day of

NOTARY PUBLIC. original
copy Constable Precinct 5

CONSTABLE CONSTABLE

No. 92-13,523

ELIJAH W. RATCLIFF, INDIVIDUALLY, AND ELIJAH W. RATCLIFF, EX RELATIONE DUNBAR RESOURCES-LIVINGSTON, INC., PLAINTIFFS	IN THE DISTRICT COURTS OF TRAVIS COUNTY, TEXAS 98TH JUDICIAL DISTRICT

VS. ROBERT G. JOHNSTONE; R. D. COOPER, THE STATE OF TEXAS; THE STATE BAR OF TEXAS; AND THE TEXAS EMPLOYMENT COMMISSION, AN AGENCY OF THE STATE OF TEXAS, DEFENDANTS

ORDER ON DEFENDANTS' SPECIAL EXCEPTIONS

On this day came on to be considered Defendant State Bar of Texas' First Amended Special Exceptions to Plaintiff's First Amended Original Petition and Defendant Texas Employment Commission's Plea to the Jurisdiction. After considering the evidence and argument of counsel, the Court sustains Defendant State Bar of Texas' First Amended Special Exception. In addition, after considering the evidence and argument of counsel, the Court finds that Defendant Texas Employment Commission's Plea to the Jurisdiction is more properly before the Court as a special Exception, and, therefore, sustains Defendant Texas Employment Commission's Plea to the Jurisdiction as a special exception As to each special exception, the Court hereby orders Plaintiff to amend Plaintiff's

First Amended Original Petition as to a cause of action on or before Friday, August 27, 1993.

Signed this 18th day of August, 1993.

s// Judge Myers
JUDGE PRESIDING

No. 92-13,523

ELIJAH W. RATCLIFF, INDIVIDUALLY, AND ELIJAH W. RATCLIFF, EX RELATIONE DUNBAR RESOURCES-LIVINGSTON, INC., PLAINTIFFS	IN THE DISTRICT COURTS OF TRAVIS COUNTY, TEXAS 98TH JUDICIAL DISTRICT

VS. ROBERT G. JOHNSTONE; R. D. COOPER, THE STATE OF TEXAS; THE STATE BAR OF TEXAS; AND THE TEXAS EMPLOYMENT COMMISSION, AN AGENCY OF THE STATE OF TEXAS, DEFENDANTS

ORDER ON DEFENDANT STATE BAR OF TEXAS' OBJECTION TO PLAINTIFF ELIJAH RATCLIFF ACTING AS ATTORNEY OF RECORD FOR PLAINTIFF DUNBAR RESOURCES-LIVINGSTON, INC.

On the 16th day of September, 1993, came on to be heard Defendant State Bar of Texas' Objection to Plaintiff Elijah Ratcliff Acting as Attorney of Record for Plaintiff Dunbar Resources-Livingston, Inc. After considering the evidence and argument of counsel, the Court hereby finds that said objection is GRANTED. The Court further finds that Elijah Ratcliff is pro se, and that Elijah Ratcliff does not have standing to represent Plaintiff Dunbar Resources-Livingston, Inc.

s// John K. Dietz
JUDGE PRESIDING

APPROVED AS TO FORM:

s// Mary F. Klapperich
Mary F. Klapperich
Assistant General Counsel
State Bar of Texas
State bar Card No. 11550700
ATTORNEY FOR DEFENDANT

No. 92-13,523

ELIJAH W. RATCLIFF, INDIVIDUALLY, AND ELIJAH W. RATCLIFF, EX RELATIONE DUNBAR RESOURCES-LIVINGSTON, INC., PLAINTIFFS	IN THE DISTRICT COURTS OF TRAVIS COUNTY, TEXAS 98TH JUDICIAL DISTRICT

VS. ROBERT G. JOHNSTONE; R. D. COOPER, THE STATE OF TEXAS; THE STATE BAR OF TEXAS; AND THE TEXAS EMPLOYMENT COMMISSION, AN AGENCY OF THE STATE OF TEXAS, DEFENDANTS

ORDER ON DEFENDANT STATE BAR OF TEXAS' MOTION TO SEVER

On the 16th day of September, 1993, came on to be heard Defendant State Bar of Texas' Motion to Sever. After considering the evidence and argument of counsel, the Court hereby DENIES said Motion.

JUDGE PRESIDING

APPROVED AS TO FORM:

s// Mary F. Klapperich

Mary F. Klapperich,
Assistant General Counsel

State Bar of Texas
State Bar Card No. 11550700
ATTORNEY FOR DEFENDANT

Office of the Attorney General

State of Texas

DAN MORALES

ATTORNEY GENERAL

October 7, 1993

Honorable John K. Dietz
250th District Court
P. O. Box 1748
Austin, Texas 78767

RE: Elijah W. Ratcliff and
Dunbar Resources, Inc.
vs.
The State Bar of Texas, et
al.,
Cause No. 92-13,523;
In the 98th District Court
of Travis County, Texas

Dear Judge Dietz:

Enclosed is a proposed Order in the above referenced cause of action arising from the hearing that occurred on September 16, 1993. At a subsequent hearing on the same matter Judge Davis informed me that the Defendants' Plea to the Jurisdiction had been denied according to the docket sheet. I was not aware of that and have included that portion of the order in the attached document.

I hope the attached Order meets your intentions. If not, please contact me.

By copy of this letter I am

furnishing copies to all parties.

Sincerely,

s// Susan F. Eley

Susan F. Eley
Assistant Attorney General
P. O. Box 12548
Austin, Texas 70711-2548
(512) 463-2002
(512) 478-4013 FAX

SFE/sf

cc: Elijah W. Ratcliff
P. O. Box 862
Livingston, Texas 77351

Mary F. Klapperich
P. O. Box 12487
Capitol Station
Austin, Texas 78711

No. 92-13,523

ELIJAH W. RATCLIFF, INDIVIDUALLY, AND ELIJAH W. RATCLIFF, EX RELATIONE DUNBAR RESOURCES-LIVINGSTON, INC., PLAINTIFFS	IN THE DISTRICT COURTS OF TRAVIS COUNTY, TEXAS 98TH JUDICIAL DISTRICT

VS. ROBERT G. JOHNSTONE; R. D. COOPER, THE STATE OF TEXAS; THE STATE BAR OF TEXAS; AND THE TEXAS EMPLOYMENT COMMISSION, AN AGENCY OF THE STATE OF TEXAS, DEFENDANTS

ORDER ON DEFENDANTS ROBERT G. JOHNSTONE, R. D. COOPER, THE STATE OF TEXAS AND THE TEXAS EMPLOYMENT COMMISSION'S PLEA TO THE JURISDICTION AND SPECIAL EXCEPTIONS

On the 16th day of September, 1993, came on to be heard Defendants Robert G. Johnstone, R.D. Cooper, the State of Texas and the Texas Employment Commission's Plea to the Jurisdiction and Special Exceptions. After considering the evidence and argument of counsel, the Court hereby finds that Defendants Robert G. Johnstone, R.D. Cooper, the State of Texas and the Texas Employment Commission's Plea to the Jurisdiction should be denied but that Defendants Special Exception is well founded and should be granted.

It is therefore ORDERED that Defendants' Plea to the Jurisdiction is DENIED and that Defendants, Special Exception is GRANTED and that paragraph I-V of Plaintiff's Second Amended

Original Petition are stricken insofar as they relate to the actions of Elijah W. Ratcliff, ex relatione Dunbar Resources-Livingston, Inc. v. Defendants Robert G. Johnstone, R.D. Cooper, the State of Texas and the Texas Employment Commission.

SIGNED this 30th day of November, 1993.

s// John K. Dietz
JUDGE PRESIDING

APPROVED AS TO FORM:

Susan F. Eley
Assistant Attorney General
State Bar No. 06514500
Taxation Division
P. O. Box 12548
Austin, Texas 78711-2548
(512) 463-2002
(512) 478-4013 Telecopier

AMALIA RODRIGUEZ-MENDOZA
DISTRICT CLERK, TRAVIS COUNTY
P.O. BOX 1748
AUSTIN. TEXAS 78767

Denying/S. Jdgmt
Cause No. 9213523
DUNBAR RESOURCES-LIVINGSTON, INC.
vs.
TEXAS EMPLOYMENT COMMISSION

You are hereby notified that the above order has been signed on the 30th day of NOVEMBER, 1993, by the 98th District Court of Travis County, Texas in the above entitled and numbered cause.

TO: DUNBAR RESOURCES-LIVINGSTON, INC.,
PRO SE
P. O. BOX 862
LIVINGSTON, TEXAS 77351

AMALIA RODRIGUEZ-MENDOZA, District Clerk

IN THE COURT OF APPEALS,
THIRD DISTRICT OF TEXAS,
AT AUSTIN

JUDGMENT RENDERED MARCH 9, 1994

NO. 3-94-053-CV

ELIJAH W. RATCLIFF V. ROBERT G. JOHNSTONE, R. D. COOPER, KAREN JOHNSON, STATE OF TEXAS, STATE BAR OF TEXAS, AND TEXAS EMPLOYMENT COMMISSION

APPEAL FROM 98TH DISTRICT COURT OF TRAVIS COUNTY

BEFORE JUSTICES POWERS, ABOUSSIE AND JONES
APPEAL DISMISSED FOR WANT OF JURISDICTION- PER CURIAM OPINION

THIS CAUSE having this day come on to be considered, and it appearing to the Court that it has this day dismissed appellant's motion for extension of time to file the record, and the Court being of the opinion that the trial-court order of November 30, 1993, is interlocutory; that the Court is without jurisdiction of the appeal; and that the appeal should be dismissed: IT IS ACCORDINGLY considered, adjudged and ordered that the appeal be and is hereby dismissed for want of jurisdiction. It is FURTHER ordered that the appellant, Elijah W. Ratcliff, as principal, and Lake Livingston Realty, Inc., of 1000 West Street, Livingston, Texas 77351 and Dunbar Resources-Livingston, Inc., of P. O. Box 862, Livingston, Texas 77351, as sureties on the appeal bond herein, pay all costs

relating to this appeal, both in this Court and the court below; and that this decision be certified below for observance.

IN THE COURT OF APPEALS, THIRD DISTRICT OF TEXAS, AT AUSTIN

NO. 3-94-053-CV

ELIJAH W. RATCLIFF,
APPELLANT
VS.
ROBERT G. JOHNSTONE, R. D. COOPER, KAREN JOHNSON, STATE OF TEXAS, STATE BAR OF TEXAS, AND TEXAS EMPLOYMENT COMMISSION, APPELLEES

FROM THE DISTRICT COURT OF TRAVIS COUNTY, 98TH JUDICIAL DISTRICT

NO. 92-13523, HONORABLE JOHN K. DIETZ, JUDGE PRESIDING

PER CURIAM

Appellant Elijah W. Ratcliff seeks to appeal from the district court's November 30, 1993, order granting the appellees State Bar of Texas and Karen Johnson's plea to the jurisdiction and dismissing Ratcliff's third original amended petition. The November 30, 1993, order does not, (1) explicitly dispose of appellees Robert G. Johnstone, R. D. Cooper, the State of Texas, and the Texas Employment Commission; (2) recite that the order is intended to be a judgment, much less a final judgment; or (3) contain a "Mother Hubbard" clause that denies all relief not expressly granted. See **North E. Indep. Sch. Dist. v. Aldridge**, 400 S.W.2d 893, 897-98 (Tex. 1966).

We hold that the November 30, 1993, order is interlocutory, and, thus, we have no jurisdiction over this appeal.

Tex. Civ. Prac. & Rem. Code Ann. § 51.012 (West 1986); **Aldridge**, 400 S.W.2d at 895 (order or judgment is interlocutory if it does not dispose of all parties and claims).

We dismiss for want of jurisdiction both the appeal and Ratcliff's motion for extension of time to file the record. **Tex. R. App. P. 60(a)(2).**

Before Justices Powers, Aboussie and Jones Appeal Dismissed for Want of Jurisdiction

Filed: March 9, 1994
Do Not Publish

IN THE COURT OF APPEALS FOR THE THIRD DISTRICT OF TEXAS AT AUSTIN
NO, 03-94-00141-CV

ELIJAH W. RATCLIFF, INDIVIDUALLY, AND ELJAH W RATCLIFF, EX RELATIONE DUNBAR RESOURCES-LIVINGSTON, RELATOR
V.
THE HONORABLE W. JEANNE MEURER, PRESIDING JUDGE OF THE 98TH JUDICIAL DISTRICT OF TEXAS, AND THE HONORABLE AMALIA RODRIGUEZ-MENDOZA, CLERK OF THE DISTRICT COURT OF TRAVIS COUNTY,
RESPONDENTS

ORIGINAL PROCEEDING FROM TRAVIS COUNTY

ORDER
PER CURIAM

Relator's motion for leave to file petition for writ of mandamus is overruled. **Tex. R. App. P. 121(c).**

It is so ordered this 31st day of March, 1994.

Before Chief Justice Carroll, Justices Kidd and B. A. Smith
Do Not Publish

THE SUPREME COURT OF TEXAS
P. O. Box 12248
Supreme Court Building
Austin, Texas 78711
John T. Adams, Clerk

April 20, 1994

Mr. Elijah W. Ratcliff
P.O. Box 862
Livingston, TX 77351

Ms. Susan F. Eley
Office of the
Attorney General
Dan Morales, A.G.
P. O. Box 12548
Capitol Station
Austin, TX 78711

Ms. Linda A. Acevedo
Assistant General Counsel
State Bar of Texas
P. O. Box 12487
Austin, TX 78711

RE: Case No. 94-0324
Style: ELIJAH W. RATCLIFF, INDIVIDUALLY, and ELIJAH W. RATCLIFF, EX RELATIONE DUNBAR RESOURCES-LIVINGSTON, [INC.]
v.
THE HONORABLE JEANNE MEURER, JUDGE

Dear Counsel:

Today, the Supreme Court of Texas overruled relator's motion for leave to file petition for writ of mandamus in the above styled case.

Respectfully yours,

S// Michael C. Murphey
JOHN T. ADAMS, CLERK

BY: Michael C. Murphey, Deputy Clerk

cc: Ms. Amalia Rodriguez-Mendoza
The Hon. John K. Dietz
Honorable W. Jeanne Meurer
Ms. Karen R. Johnson

(Proposed Order)

No. 92-13,523

ELIJAH W. RATCLIFF, INDIVIDUALLY, AND ELIJAH W. RATCLIFF, EX RELATIONE DUNBAR RESOURCES-LIVINGSTON, INC., PLAINTIFFS VS. ROBERT G. JOHNSTONE; R. D. COOPER, THE STATE OF TEXAS; THE STATE BAR OF TEXAS; KAREN JOHNSON; AND THE TEXAS EMPLOYMENT COMMISSION, AN AGENCY OF THE STATE OF TEXAS, DEFENDANTS	IN THE DISTRICT COURTS OF TRAVIS COUNTY, TEXAS 98TH JUDICIAL DISTRICT

ORDER ON DEFENDANTS STATE BAR OF TEXAS AND KAREN JOHNSON'S MOTION TO CLARIFY NOVEMBER 30, 1993, ORDER

On this day came on to be heard Defendants' State Bar of Texas and Karen Johnson's Motion to Clarify November 30, 1993, Order granting Defendants' State Bar of Texas and Karen Johnson's Plea to the Jurisdiction which dismissed Plaintiffs' Third Original Petition with prejudice. Said Order signed by this Court was intended as a dismissal of this cause of action with prejudice. The Court therefore hereby dismisses this entire cause of action with prejudice and further denies all relief not expressly granted in this Order.

Signed this day of May, of 1994.

JUDGE PRESIDING

AMALIA RODRIGUEZ-MENDOZA
DISTRICT CLERK. TRAVIS COUNTY
P.O. BOX 1748
AUSTIN, TEXAS 78767

Order of Dismissal Signed
Case No. 92-13523
DUNBAR RESOURCE-LIVINGSTON, INC.
VS.
TEXAS EMPLOYMENT COMMISSION

You are hereby notified that the above order has been signed on the 31st day, of May, 1994, by the 98th District Court of Travis County, Texas in the above numbered and entitled cause.

TO: ELIJAH W. RATCLIFF, INDIVIDUALLY,
PRO SE
P. O. BOX 862,
LIVINGSTON, TEXAS 77351

AMALIA RODRIGUEZ-MENDOZA, District Clerk

No. 92-13,523

ELIJAH W. RATCLIFF, INDIVIDUALLY, AND ELIJAH W. RATCLIFF, EX RELATIONE DUNBAR RESOURCES-LIVINGSTON, INC., PLAINTIFFS	IN THE DISTRICT COURTS OF TRAVIS COUNTY, TEXAS 98TH JUDICIAL DISTRICT

VS. ROBERT G. JOHNSTONE; R. D. COOPER, THE STATE OF TEXAS; THE STATE BAR OF TEXAS; KAREN JOHNSON AND THE TEXAS EMPLOYMENT COMMISSION, AN AGENCY OF THE STATE OF TEXAS, DEFENDANTS

ORDER

On the 28th day of June, 1994, came to be heard Plaintiffs, Motion for New Trial. Plaintiff, Elijah Ratcliff, appeared pro se.

Defendants Robert C. Johnstone, R. D. Cooper, The State of Texas, and The Texas Employment Agency appeared by and through counsel of record. Defendants State Bar of Texas and Karen Johnson appeared by and through counsel of record.

After considering the pleadings, evidence, and arguments of counsel, the Court is of the opinion that Plaintiffs' Motion for New Trial should and hereby is DENIED.

It is, therefore, ORDERED, ADJUDGED,

and DECREED that Plaintiffs' Motion for New Trial in the above-styled cause of action is hereby DENIED.

SIGNED this 28th day of June, 1994.

s//Margaret A. Cooper
JUDGE PRESIDING

MANDATE

THE STATE OF TEXAS

TO THE 98TH DISTRICT COURT OF TRAVIS

COUNTY, GREETINGS:

Trial Court Cause No. 92-13523

Before our Court of Appeals for the Third District of Texas on the 9th of March 1994, the cause on appeal to revise or reverse your judgment between

Elijah W. Ratcliff

No. 03-94-00053-CV

v.

Robert G. Johnstone, R. D. Cooper, Karen Johnson, State of Texas, State Bar of Texas, and Texas Employment Commission

was determined, and therein our Court of Appeals made its order in these words:

THIS CAUSE having this day come on to be considered, and it appearing to the Court that it has this day dismissed appellant's motion for extension of time to file the record, and the Court being of the opinion that the trial-court order of November 30, 1993, is interlocutory, that the Court is without jurisdiction of the appeal; and that the appeal should be dismissed. IT IS ACCORDINGLY considered, adjudged and ordered that the appeal be and is hereby dismissed for want of jurisdiction. It is FURTHER ordered that the appellant, Elijah W. Ratcliff, as principal, and Lake Livingston Realty, Inc., of 1000 West Street, Livingston, Texas 77351 and Dunbar Resources-Livingston, Inc., of P. O. Box 862, Livingston, Texas 77351, as sureties on the appeal bond herein, pay all costs relating to this appeal, both in this Court and the court below; and that this decision be certified below for observance.

Wherefore, we command you to observe the order of our Court of Appeals in this behalf and in all things have the order duly recognized, obeyed, and executed.

Witness the Honorable Jimmy Carroll, Chief Justice of the Court of Appeals for the Third District of Texas, with the seal of the Court affixed at the City of

Austin on this the 12th day of July 1994.

W. KENNETH LAW, CLERK

By: s//Tricia McPeak

Tricia McPeak, Deputy

August 11, 1994

OFFICIAL NOTICE FROM COURT OF APPEALS
THIRD DISIRICT OF TEXAS

RE: Case No. 03-94-00340-CV

Style Elijah W. Ratcliff
v.
Robert C. Johnstone, R. D. Cooper, Karen Johnson, State of Texas

Appellant 's motion for accelerated appeal was dismissed by this Court on the date noted above.

T. C. Case # 92-13523
W. Kenneth Law, Clerk

THIRD COURT OF APPEALS
P. O. BOX 12547
AUSTIN, TEXAS 78711

MR. ELIJAH W. RATCLIFF
P. O. BOX 862
MAIL TO: LIVINGSTON TX 77351

OFFICIAL NOTICE FROM COURT OF APPEALS
THIRD DISTRICT OF TEXAS
October 20, 1994
THIRD DISTRICT OF TEXAS

RE: Case 03-94-00053-CV

Style: Elijah W. Ratcliff
v.
Robert G. Johnstone, R. D. Cooper, Karen Johnson, State of Texas

Appellant's motion to abate costs assessment against appellant dismissed by this Court on the date noted above.

T. C. Case # 92-13523
W. Kenneth Law, Clerk

THIRD COURT OF APPEALS
P.O. BOX 12547
AUSTIN, TEXAS 78711

MR. ELIJAH W. RATCLIFF
P. O. BOX 862
MAIL TO: LIVINGSTON TX 77351

OFFICIAL NOTICE FROM SUPREME COURT OF TEXAS
August 7, 1995
RE: Case No. 95-0757
COA#: 03-94-00340-CV
Style: ELIJAH W. RATCLIFF. Individually and ELIJAH W. RATCLIFF, EX RELATIONE
v.
ROBERT G. JOHNSTONE, R.D. COOPER, KAREN JOHNSON, THE STATE OF TEXAS

Relator's motion for leave to file petition for writ of mandamus in the above styled case was this day filed with the Supreme Court of Texas.

John T. Adams,
Clerk

SUPREME COURT OF TEXAS
P.O. BOX 12248
AUSTIN, TEXAS 78711

MR ELIJAH W RATCLIFF
P 0 BOX 862
MAIL TO: LIVINGSTON TX 77351

THE SUPREME COURT OF TEXAS
Post Office Box 12248
Austin, Texas 78711 (512) 463-1312

September 14, 1995

Ms. Susan F. Eley
Office of the Attorney General Dan Morales, A. G. P. O. Box 12548
Capitol Station Austin, TX 78711

Ms. Mary F. Klapperich Office of General Counsel State Bar of Texas P. O. Box 12487 Austin, TX 78711

RE: Case Number 95-0757
Style: ELIJAH W. RATCLIFF, Individually and ELIJAH W. RATCLIFF, EX RELATIONE DUNBAR RESOURCES-LIVINGSTON INC.
V.
ROBERT G. JOHNSTONE, R.D. COOPER, KAREN JOHNSON, THE STATE OF TEXAS, THE STATE BAR OF TEXAS, an agency of the State of Texas, and the TEXAS EMPLOYMENT COMMISSION, an agency of the STATE OF TEXAS, THE HONORABLE AMALIA-RODRIGUEZ-MENDOZA, ET AL.

Dear Counsel:

Today, the Supreme Court of Texas overruled relator's motion for leave to file petition for writ of mandamus in the above styled case.

Respectfully yours,

JOHN T. ADAMS, CLERK

BY: Michael C. Murphey, Deputy Clerk

cc: Honorable W. Jeanne Meurer
Mr. Elijah W. Ratcliff
Ms. Amalia Rodriguez-Mendoza
Mr. W. Kenneth Law, Clerk

IN THE COURT OF APPEALS THIRD DISTRICT OF TEXAS AT AUSTIN

JUDGMENT RENDERED OCTOBER 11, 1995

NO. 03-94-00340-CV

ELIJAH W. RATCLIFF V. ROBERT G. JOHNSTONE, R. D. COOPER, KAREN JOHNSON, STATE OF TEXAS, STATE BAR OF TEXAS, AND TEXAS EMPLOYMENT COMMISSION
APPEAL FROM 98TH DISTRICT COURT OF TRAVIS COUNTY
BEFORE CHIEF JUSTICE CARROLL, JUSTICES JONES AND KIDD
AFFIRMED -- PER CURIAM OPINION

THIS CAUSE came on to be heard on the transcript of the record of the court below, and the same being considered, because it is the opinion of this Court that there was no error in the trial court's judgment: IT IS THEREFORE considered, adjudged and ordered that the judgment of the trial court is in all things affirmed. It is FURTHER ordered that the appellant, Elijah W. Ratcliff, as principal, and Lake Livingston Realty, Inc., of 1000 West Street, Livingston, Polk County, Texas 77351, and Dunbar Resources-Livingston, Inc., of P. O. Box 862, Livingston, Polk County, Texas 77351, as sureties on the appeal bond herein, pay all costs relating to this appeal, both in this Court and the court below; and that this decision be certified below for observance.

TEXAS COURT OF APPEALS, THIRD DISTRICT,
AT AUSTIN

==========
NO. 03-94-00340-CV
==========

Elijah W. Ratcliff, Appellants
v.
Robert G. Johnstone, R. D. Cooper, Karen Johnson, State of Texas, State Bar of Texas, and Texas Employment Commission, Appellees

==========
===
FROM THE DISTRICT COURT OF TRAVIS COUNTY, 98TH JUDICIAL DISTRICT
NO. 92-13523, HONORABLE JOHN K. DIETZ, JUDGE PRESIDING
==========

PER CURIAM

Elijah W. Ratcliff appeals the dismissal of his actions against the State of Texas, the Texas Employment Commission, the State Bar of Texas, three individual employees of those organizations, and the State of Texas. He sued Robert G. Johnstone, R. D. Cooper, the TEC, and the State of Texas ("the TEC appellees"), seeking to set aside employment taxes assessed against Dunbar Resources-Livingston, Inc. He added the Bar and Bar' executive director, Karen Johnson, as defendants ("the Bar appellees"), complaining of the Bar's refusal to reinstate him following his pardon from the conviction that led to his disbarment The court dismissed the actions against the TEC appellees after

sustaining their special exception and striking the pleadings against them.

The court dismissed the action against the Bar Appellees after sustaining their plea to the jurisdiction and noting that Ratcliff had not met their special exceptions as ordered. We will affirm the judgment.

The TEC appellees

Ratcliff's failure to designate a sufficient record waives any substantive appellate review of the dismissal of the case against the TEC appellees. The rules charge the appellant to "see that a sufficient record is presented to show error requiring reversal." **Tex. R. App. P. 50(d).** We must presume that any missing portions of the record support the judgment. See **Simon v. York Crane & Rigging Co.**, 7 S.W.2d 793, 795 (Tex. 1987). Ratcliff did not designate for inclusion in the record the TEC appellees' special exception on which the court relied to dismiss the case. No document in the record on appeal reveals the nature of that exception, which was the sole stated basis for dismissing the TEC appellees. None of Ratcliff's points presents error that dissuades us from holding that the exception's absence from the record requires us to presume that it supports the striking of the pleading and the dismissal of the TEC appellees. We overrule the points of error as they relate to the dismissal of the TEC appellees. The Bar appellees

To review the dismissal of the Bar appellees for want of jurisdiction, we must liberally construe Ratcliff's petition in his favor, accept his factual allegations, indulge all reasonable inferences favoring him, and look to his

intent. See **Texas As'n of Business v. Texas Air Control Bd.**, 852 S.W.2d 440, 446 (Tex. 1993) (quoting **Huston v. Federal Deposit Ins. Corp.**, 663 S.W.2d 126, 129 (Tex. App.-Eastland 1983, writ ref'd n.r.e.). The following recitation is culled from Ratcliff's third amended original petition.

[2]

The allegations

Ratcliff is a fiduciary of and substantial interest holder in Dunbar Resources-Livingston, Inc. Ratcliff disputed a TEC statement of employer account which indicated that Dunbar Resources owed employment taxes; Dunbar Resources had employed no one during the period the taxes purportedly accrued.

Ratcliff earned his bar license in 1962. In 1971, he was accused of theft by check when he stopped payment on a check used to pay for a truck that proved to be defective. Ratcliff was indicted by a Polk County jury and convicted by a Montgomery County petit jury, neither of which had sufficient numbers of African-American members in proportion to the percentage of African-American citizens among the population of the counties. He was disbarred in 1974.

Ratcliff sought reinstatement to the Bar after he learned of his disbarment in 1977. That year, the Bar rejected his tender o dues because of his conviction and disbarment. His subsequent requests for reinstatement failed even though the governor pardoned him in 1983.

He claims the Bar injured him by talking to others about his disbarment. Representations attributable to the Bar regarding his legal status were "exhaustively disseminated" to sources

accessible to and affecting his "prospective legal clients, business investors, academic associates and other economic facilities," representations he alleged were incomplete. He alleged that elements of the Bar influenced Internal Revenue Service agents to violate his civil rights from 1980 to the present.

[3]

Discussion

Ratcliff raises six points of error against the dismissal. By points one through three and point five, he asserts that he properly invoked the jurisdiction of the trial court; he contends that the dismissals were therefore contrary to established law. He contends by point four that certain requests for admissions were deemed admitted and, by point six, that those admissions should have caused the court to grant his motion for summary judgment. The Bar appellees' successful plea to the jurisdiction was premised upon immunity from suit. State agencies are immune from suit unless the legislature waives that immunity. **Liberty Mut. Ins. Co. v. Sharp**, 874 S.W.2d 736, 738 (Tex. App.-Austin 1994, writ denied). The Bar is a state agency. **Tex. Gov't Code Ann. 81.011** (West 1988). Ratcliff has shown no applicable waiver of immunity that would expose the Bar to his suit. The Bar's executive director is absolutely immune from suit for any conduct in the course of her official duties. **Tex. R. Disciplinary P. 15.11** (West Supp. 1995). Ratcliff's petition alleges no action taken specifically by Johnson. He did not allege that she acted outside the scope of her official duties.

When a suit is barred by

governmental immunity, a plea to the jurisdiction is proper. **Liberty**, 874 S.W.2d at 739. The same is true for claims against individuals performing within their official governmental authority. See **id.** at 738-39. Because governmental immunity barred the claims below, the court properly sustained the plea to the jurisdiction. We overrule points one, two, three, and five. The court did not err in denying Ratcliff's motion for summary judgment. The trial court's striking of Ratcliff's pleadings and dismissal of the claims against the TEC defendants left no claims on which Ratcliff could base a successful summary judgment motion.

[4]

The court's lack of jurisdiction disabled it from ruling on the summary judgment against the Bar defendants. We overrule point six.

After overruling the other five points, we need not consider point four. Whether the court erred with respect to deemed admissions is moot because such admissions are meaningless without supportable jurisdiction or pleadings.

Conclusion

We hold that the trial court properly dismissed the claims against the TEC defendants and properly found it lacked jurisdiction over the claims against the Bar defendants. Ratcliff raised no reversible error. We affirm the judgment.

Before Chief Justice Carroll, Justices Jones and Kidd

Affirmed

Filed: October 11, 1995

Do Not Publish

[5]

OFFICIAL NOTICE FROM COURT OF APPEALS
THIRD DISTRICT OF TEXAS
DATE: October 19, 1995
RE: Case No. 03-94-00340-CV
STYLE: Elijah W. Ratcliff Robert G. Johnstone, R. D. Cooper, Karen Johnson, State of Texas

The appellant's motion for rehearing was filed in this Court on the date noted above.

T. C. Case 92-13523 W. Kenneth Law, Clerk
THIRD COURT OF APPEALS
P.O. BOX 12547
AUSTIN, TEXAS 78711

MAIL TO:
MR ELIJAH W RATCLIFF
P 0 BOX 862
LIVINGSTON TX 77351

OFFICIAL NOTICE FROM COURT OF APPEALS
THIRD DISTRICT OF TEXAS
DATE: November 15, 1995

RE: Case No, 03-94-00340-CV

STYLE: Elijah W. Ratcliff
v
Robert G. Johnstone, R.D. Cooper, Karen Johnson, State of Texas
The appellant's motion for rehearing was overruled on the date noted above.

T. C. Case # 92-13523 W. Kenneth Law, Clerk
THIRD COURT OF APPEALS
P.O. BOX 12547
AUSTIN, TEXAS 78711

MAIL TO:
MR ELIJAH W RATCLIFF
P 0 BOX 862
LIVINGSTON TX 77351

OFFICIAL NOTICE FROM
SUPREME COURT OF TEXAS
Re: Case No. 95-1232
COA#: 03-94-00340-CV
ELIJAH W. RATCLIFF November 29, 1995
v.
ROBERT G. JOHNSTONE, R.D. COOPER, KAREN JOHNSON, STATE OF TEXAS,

The application for writ of error in the above styled case was this day filed with the Supreme Court of Texas.

Although a response to the application is not required, the Court encourages responses. See **Rule 136, T.R.A.P.** as to time for filing and form. The fee for each reply is $5.00.

John T. Adams. Clerk

SUPREME COURT OF TEXAS
P.O. BOX 12248
AUSTIN, TEXAS 78711

MR ELIJAH W RATCLIFF
P 0 BOX 862
MAIL To: LIVINGSTON TX 77351

OFFICIAL NOTICE FROM
SUPREME COURT OF TEXAS
RE: Case No. 95-1232 December 12, 1995
COA#: 03-94-00340-CV
ELIJAH W. RATCLIFF
v. ROBERT C. JOHNSTONE, R.D. COOPER, KAREN JOHNSON, STATE OF TEXAS,

Today. the Supreme Court of Texas received and filed petitioner/s motion in the above styled and numbered case.

John T. Adams, Clerk
SUPREME COURT OF TEXAS
P.O. BOX 12248
AUSTIN, TEXAS 78711

MAIL TO: MR ELIJAH W RATCLIFF
P 0 BOX 862
LIVINGSTON TX 77351

03-94-00053-CV
COURT NO. 92-13523

THE COURT OF APPEALS
THIRD COURT OF APPEALS DISTRICT
AUSTIN, TEXAS

ELIJAH W. RATCLIFF, INDIVIDUALLY, AND ELIJAH W. RATCLIFF, EX RELATIONE DUNBAR RESOURCES-LIVINGSTON [INC.],
APPELLANT

Vs

ROBERT G. JOHNSTONE; R. D. COOPER; KAREN JOHNSON; THE STATE OF TEXAS; THE STATE BAR OF TEXAS, AN AGENCY OF THE STATE OF TEXAS; AND THE TEXAS EMPLOYMENT COMMISSION, AN AGENCY OF THE STATE OF TEXAS,
APPELLEES

APPENDIX OF RECORD TO BRIEF OF APPELLANT

(VOLUME I)

Elijah W. Ratcliff,
Consultant
P. O. Box 862
Livingston, Texas 77351
Ph. 409 327-7108

ELIJAH W. RATCLIFF, INDIVIDUALLY, AND ELIJAH W. RATCLIFF, EX RELATIONE DUNBAR RESOURCES-LIVINGSTON [INC.],
APPELLANT
VS
ROBERT G. JOHNSTONE; R. D. COOPER; KAREN JOHNSON; THE STATE OF TEXAS; THE STATE BAR OF TEXAS, AN AGENCY OF THE STATE OF TEXAS; AND THE TEXAS EMPLOYMENT COMMISSION, AN AGENCY OF THE STATE OF TEXAS,
APPELLEES

IN THE COURT OF APPEALS
THIRD COURT OF APPEALS
DISTRICT AT AUSTIN

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...

NO. 03-94-00053-CV
TRIAL COURT NO. 92-13523

IN THE COURT OF APPEALS
THIRD COURT OF APPEALS DISTRICT
AUSTIN, TEXAS

ELIJAH W. RATCLIFF, INDIVIDUALLY, AND
ELIJAH W. RATCLIFF, EX RELATIONE DUNBAR
RESOURCES-LIVINGSTON (INC.),
APPELLANT

VS

ROBERT G. JOHNSTONE; R. D. COOPER; KAREN
JOHNSON; THE STATE OF TEXAS; THE STATE
BAR OF TEXAS, AN AGENCY OF THE STATE OF
TEXAS; AND THE TEXAS EMPLOYMENT
COMMISSION, AN AGENCY OF THE STATE OF
TEXAS,
APPELLEES

APPENDIX OF RECORD TO BRIEF OF APPELLANT

(VOLUME II)

Elijah W. Ratcliff,
Consultant
P. O. Box 862
Livingston, Texas 77351
Ph. 409 327-7108

...

[A-166]

NO. 92-13,523

ELIJAH W. RATCLIFF, INDIVIDUALLY,
AND
ELIJAH W. RATCLIFF, EX RELATIONE
DUNBAR RESOURCES-LIVINGSTON [INC.),
PLAINTIFF
VS
ROBERT G. JOHNSTONE; R. D. COOPER;
KAREN JOHNSON; THE STATE OF TEXAS; THE
STATE BAR OF TEXAS, AN AGENCY OF THE
STATE OF TEXAS; AND THE TEXAS EMPLOYMENT
COMMISSION, AN AGENCY OF THE STATE OF
TEXAS,
DEFENDANTS

IN THE DISTRICT COURTS OF TRAVIS COUNTY,
TEXAS 98TH JUDICIAL DISTRICT

REQUEST FOR PREPARATION OF RECORD
AND STATEMENT OF POINTS ON APPEAL

TO THE SAID HONORABLE COURT; THE COURT REPORTER FOR THE 353RD JUDICIAL DISTRICT; THE CLERK OF THE DISTRICT COURTS; AND COUNSEL OF RECORD FOR DEFENDANTS:

REQUEST FOR STATEMENT OF FACTS

TO THE OFFICIAL COURT REPORTER:

Plaintiff, Pro Se, requests the official Court Reporter to prepare a Statement of Facts for utilization in the Appeal perfected, or to be perfected, in the above entitled and numbered cause, and such Statement of Facts should include the following items, to wit:

The proceedings on Plaintiff's Motion for New Trial held herein on the 28th day of

[1]

[A-167]

June, 1994, as set by Plaintiff, Pro So, for 2:00 o'clock P. M. on the indicated date.

REQUEST FOR TRANSCRIPT

TO THE CLERK OF THE DISTRICT COURTS OF TRAVIS COUNTY, TEXAS:

I

Plaintiff, hereby, requests the Clerk of the District Courts of Travis County, Texas to prepare a transcript to comprise the primary contents of the Record on Appeal including the following documents, to wit:

1. Plaintiff's Original Petition for Judicial Review;
2. Plaintiff's First Amended original Petition;
3. Plaintiff's Second Amended original Petition;
4. Plaintiff's Third Amended original Petition;
5. the Answer filed by Attorney Susan F. Eley;
6. the Amended Answer filed by Attorney Mary F. Klapperich;
7. the Motion for New Trial as submitted herein as entertained on the 28th day of June, 1994;
8. Plaintiff's Request for Admissions as served on opposing Counsel and filed herein;
9. Plaintiff's Supplemental Motion for Summary Judgment, with Affidavit attached thereto;
10. Affidavit II in Support of Summary Judgment for Plaintiff;

[2]
[A-168]

11. the dispositive judgment or order giving rise to the subject Appeal rendered on Plaintiff's Motion for New Trial, heard on the 28th day of June, 1994, consisting of, or along with, the purported order of November 30, 1993 and the purported corrective Order of Dismissal entered on the 31st day of 1994:

12. Plaintiff's Request for Findings of Fact and Conclusions of Law as served herein on the 29th day of June, 1994;

13. the immediate Request for Preparation of Record and Statement of Points on Appeal as served this 29th day June, 1994.

14. the preliminary Notice; Written Questions; Answers; Notarization; and Affidavit of Service with respect to the deposition of the Witness Langston C. Johnson, Sr., on the 22nd day of June, 1994, at the Bank of Livingston in Livingston, Texas.

STATEMENT OF POINTS ON APPEAL

TO THE SAID HONORABLE COURT AND COUNSEL OF RECORD FOR DEFENDANTS:

Plaintiff, Pro Se, hereby relates the points relied upon for review on the Appeal of the above entitled and numbered

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cause to the Court of Appeals, Third Supreme Judicial District, to wit:

I Jurisdiction is properly invoked in the proceeding.

A. Jurisdiction is provided for the relief sought by plaintiff under Vernon's

Ann. Tex. Const., Art. V, Section 8. Trial Court jurisdiction is further provided by V.T.C.A. Government Code § 24.007, encompassing Article V, Section 8, of the Texas Constitution, and Vernon's Ann. Tex. Civ. St., art. 5221(b), Sec. 14(b) and (h) and 14-A, with reference to Defendant Texas Employment Commission and its employees, in addition to V.T.C.A. Civil Practice and Remedies Code §§ 104.001, et seq., and 106.001, et seq., and the provisions of 42 U.S.C.A § 1983.

B. Trial Court jurisdiction of Defendants State of Texas and the State Bar of Texas as well as the Executive Director of Defendant State Bar of Texas is provided by V.T.C.A. Civil Practice and Remedies Code §§ 103.001, et seq., 104.001, et seq., 105.001, et seq., and 106.001, et seq., in addition to such Defendants' liability under 42 U.S.C.A §§ 1983 and 2000e.

C. Jurisdiction was properly invoked further against Defendants State of Texas and the State Bar of Texas pursuant to United States Code, Const. Amend. XIV.

D. Jurisdiction of the Court of Appeals, Third Supreme Judicial District, is

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pursuant to V.T.C.A. Government Code, § 22.220(a) and (c).

II

The propositions of Plaintiff's Request for Admissions as duly served on each Counsel for Defendants were effectively admitted under the provisions of Vernon's Ann, Tex. Rules Civ. Proc., rules 169 and 215.4.a.

III

Dismissal of the multiple claims as properly asserted by the pleadings of Plaintiff, Pro Se, in the trial Court is contrary to established law and precedent.

District of Columbia Court of Appeals v Feldman, 460 U.S. 462 (1983); Consumers Union of the United States v Virginia State Bar and the Supreme Court of Virginia, 688 F.2d 218 (4th Cir. (1983), cert. den. 462 U.S. 1137.

IV

Summary judgment for one or more Plaintiffs was proper in the trial Court as the evidence adduced in the proceeding established that there remained in the proceeding no genuine issue as to any material fact, and Plaintiff, Pro Se, the moving party, is entitled to a summary judgment as a matter of law.

V

The Order of May 31, 1994, was not rendered in open Court with notice as prescribed by Rule 316, and it is further void as it incorporates a fundamental change of a judicial execution by a Judge who is

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the Respondent in a pending Motion for Recusal pursuant to Rule 18a. General Motors Corp. v Evins, 830 S.W.2d 355 (13th Dist. Corpus Christi 1992).

Respectfully submitted this 29th day of June, 1994.

s// Elijah W. Ratcliff
PLAINTIFF, PRO SE

Elijah W. Ratcliff,
Consultant
P. O. Box 862
Livingston, Texas 77351
Ph. 409 327-7108

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AFFIDAVIT OF SERVICE

The undersigned Affiant certifies under penalties of perjury as if executed before a proper notary public that a copy of the foregoing Request for Preparation of Record and Statement of Points on Appeal was served by first class United States Mail on the parties herein addressed to:

Hon. Susan F. Eley, Assistant
Attorney General of Texas
P. O. Box 12548
Austin, Texas 78711-2548;
and
Hon. Mary F. Klapperich,
Assistant General Counsel
The State Bar of Texas
State Bar Headquarters Building Austin,
Texas 78711

this 29th day of June, A. D., 1994.

s// Elijah W. Ratcliff
AFFIANT

[7]
...

OFFICIAL NOTICE FROM
COURT OF APPEALS August 12, 1994
THIRD DISTRICT OF TEXAS
RE: Case No 03-94-00340-CV

Style: Elijah W. Ratcliff
v. Robert G. Johnstone, R. D. Cooper,
Karen Johnson, State of Texas,
The transcript and appellant's brief with 2-volume appendix was filed on the date noted above.

...

Title 28, United States Code,
§ 1257. State courts; certiorari

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

Title 28, United States Code,
§ 1447. Procedure after removal generally

(a) In any case removed from a State court, the district court may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the State court or otherwise.

(b) It may require the petitioner to file with its clerk copies of all records and proceedings in such State court or may cause the same to be brought before it by writ of certiorari issued to such State court.

(c) If at any time before final

judgment it appears that the case was removed improvidently and without jurisdiction, the district court shall remand the case, and may order the payment of just costs. A certified copy of the order of remand shall be mailed by its clerk to the clerk of the State court. The State court may thereupon proceed with such case.

(d) An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1443 of this title shall be reviewable by appeal or otherwise.

Title 28, United States Code, § 1651. Writs

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

Title 42, United States Code, § 1981. Equal rights under the law

All persons within the jurisdiction of the United States shall have the same right in every State And Territory to make and enforce contracts, to sue, be parties. give evidence, and to the full and equal benefit of all laws and

proceedings for the security of persons and property as is enjoyed white citizens, and shall be subject to like punishment. pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

Title 42, United States Code, § 1982. Property rights of citizens

All citizens of the United State shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

Title 42, United States Code, § 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Title 42, United States Code, § 2000e. Definitions

For the purposes of this subchapter-

(a) The term "person" includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11, or receivers.

(b) The term "employer" means a person engaged in an in-dustry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of Title 5), or (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501 (c) of Title 26, except that during the first year after March 24, 1972, persons having fewer than twenty-five employees (and their agents) shall not be considered employers.

(c) The term "employment agency" means any person regu-larly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or condition of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for, an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is (A) twenty-five or more during the first year after March 24, 1972, or (B) fifteen or more thereafter. and such labor organization-

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended;

(2) although not certified, is a

national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy mem-bership or become affiliated with such labor organization; or

(6) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsec-tion.

(f) The term "employee" means an individual employed by an employer, except that the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of

the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision.

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the sev-eral States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959, and further includes any Governmental industry, business, or activity.

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin lslands, American Samoa, Guam, Wake Island, the Canal Zone, and the Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act.

(j) The term "religion" includes all aspects o religious observance and practice as well as belief, unless an employer demonstrates that he is unable

to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

(k) The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 2000e-2(h) of this title shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: Provided, That nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.

Title 42, United States Code, § 2000e-2. Unlawful employment practices

Employer practices

(a) It shall be an unlawful employment practice for an employer--

(1) to fail or refuse to hire or to discharge any individual, or otherwise to

discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

Employment agency practices

(b) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

Labor organization practices

(c) It shall be an unlawful employment practice for a labor organization-

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or

refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

Training programs

(d) It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

Business or enterprises with personnel qualified on basis of religion, sex, or national origin; educational institutions with personnel of particular religion

(e) Notwithstanding any other provision of this subchapter, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its

membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, and (2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

Members of Communist Party or Communist-action or Communist-front organizations

(f) As used in this subchapter, the phrase "unlawful employment practice" shall not be deemed to include any action or measure taken by an employer, labor organization, joint labor-management

committee, or employment agency with respect to an individual who is a member of the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950.

National security

(g) Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if-

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and

(2) such individual has not fulfilled or has ceased to fulfill that requirement.

Seniority or merit systems; quantity

or quality of production; ability tests; compensation based on sex and authorized by minimum wage provisions

(h) Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. It shall not be an unlawful employment practice under this subchapter for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 206(d) of Title 29.

Business or enterprises extending preferential treatment to Indians

(i) Nothing contained in this subchapter shall apply to any business or enterprise on or near an Indian

reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

Preferential treatment not to be granted on account of existing number or percentage balance

(j) Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

Title 42, United States Code, § 2000e-3. Other unlawful employment practices

Discrimination for making charges, testifying, assisting, or participating in enforcement proceedings

(a) It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this sub-chapter, or because he has made a charge, testified, assisted. or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

Printing or publication of notices or advertisements indicating prohibited preference, limitation, specification, or discrimination; occupational qualification exception

(b) It shall be an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment

by such a labor organization, or relating to any classification or referral for employment by such an employment agency, or relating to admission to, or employment in any program established to provide apprenticeship or other training by such a joint labor-management committee, indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.

Title 42, United States Code, § 2000e-7. Effect on State law.

Nothing in this subchapter shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or Political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this subchapter.

Vernon's Ann. Tex. Civ. St., Art. 5221b, Sec. 14(b):

Collections: If, after notice, any employer defaults in any payment of contributions, penalties or interest

thereon, the Commission shall collect the amount due either by civil action in a District Court in Travis County, Texas, in the name of the State and the Attorney General, or by serving a notice of assessment on the defaulting employer, stating the amount of contributions, penalties, and interest outstanding. Such notice of assessment shall be prima facie evidence of the contents thereof; provided, however, that the incorrectness of said notice of assessment may be shown. The notice shall be served in the manner provided by law for service of process on a defendant in a civil action in the district court. An employer who is aggrieved by the determination of the Commission as stated in the notice of assessment may seek judicial review with a Travis County district court not later than the 30th day after the date on which the notice of this assessment is served. A copy of the petition shall be served on a member of the Commission, or upon such person as the Commission may designate, in the manner prescribed by law for the service of process on a defendant in a civil action in district court. If the employer does not seek judicial review as provided by this subsection, the Commission assessment is final for all purposes. An assessment that is not contested by the employer or that is upheld after judicial review shall be treated as if it were the final judgment of a district court, and shall be recorded, enforced, and renewed in the same manner. Unless the employer prevails in the civil action or the notice of assessment is reversed by a reviewing court, the employer shall pay all costs of either action. The

commission may not begin a civil action in court nor make an assessment under this subsection to collect contributions or penalties from an employer after the expiration of three (3) years from the due date of such contribution, except that, in any case of a willful attempt in any manner to evade any of the provisions of the Unemployment Compensation Law or Commission rules or regulations promulgated thereunder, such action or assessment may be begun or made at any time.

An employer liable for contributions, penalties, or interest under this Act who fails to pay such sums when due shall, after a judgment has been entered therefor or an assessment has become final and execution returned unsatisfied, forfeit his right to employ individuals in this State until he enters into a bond with sureties to be approved by the Commission, in an amount not to exceed double the sum then due plus contributions estimated by the Commission to become due by said employer during the next calendar year, said bond to be conditioned upon payment of all contributions, penalties, interest, and court costs due and owing by the employer within thirty (30) days after the expiration of the next ensuing calendar year, and in the event the employer fails to furnish such bond or pay the taxes, interest, and penalty then found to be due, the Commission may proceed by injunction to prevent the continuance of such employment upon the failure by the employer by applying to the court which previously entered judgment against the employer for contributions, penalties or

interest, and a temporary injunction enjoining the employer from employing persons in this State without first posting bond as aforesaid may be granted after reasonable notice of not less than ten (10) days by said court; and such temporary injunction may upon final hearing be made permanent and shall remain in full force and effect until the requirements of this Section have been fully satisfied.

Vernon's Ann. Tex. Civ. St., Art. 5221b, Sec. 14-A:

All sums due by any employing unit to the Commission under this Act shall become a lien on all the property both real and personal belonging to such employing unit or to any individual so indebted. The lien shall attach at the time any contributions, penalties, interest, or other charges become delinquent. The provisions of Subchapters A and B of Chapter 113, Tax Code, govern the enforcement of this lien. The Commission has all the duties imposed, and the power and authority in administering and enforcing the lien created by this Section that is conferred on the Comptroller for the enforcement of other liens under Subchapters A and B of Chapter 113, Tax Code. This lien is cumulative of the other lien provided in this Act and that lien is effective according to its terms.

V.T.C.A. Civil Practices & Remedies Code § 103.001. Claimants Entitled to Compensation

A person is entitled to compensation if

the person:

(1) has served in whole or in part a sentence in prison under the laws of this state;

(2) pleaded "not guilty" to the charge for which he was convicted and that led to the imprisonment;

(3) is not guilty of the crime for which he was sentenced; and

(4) has received a full pardon for the crime and punishment for which he was sentenced.

V.T.C.A. Civil Practices & Remedies Code § 103.002. Waiver of immunity; Filing Suit

(a) A person may bring a suit against the state under this chapter, and the state's immunity from the suit is waived.

(b) The suit must be initiated by a verified petition alleging that the petitioner is entitled to compensation.

(c) The suit shall be brought in a court of competent jurisdiction either in the county of his residence at the time the suit is commenced or in Travis County.

(d) Citation must be served on the state by serving the attorney general. The attorney general shall represent the state in the proceeding.

V.T.C.A. Civil Practices & Remedies Code § 103-003. Standard of Proof

The petitioner must establish by a preponderance of the evidence that he is entitled to compensation and the amount of compensation to which he is entitled.

V.T.C.A. Civil Practices & Remedies Code § 103.004. Insufficient State Defenses

The following are not defenses to an action brought under this chapter:

(1) the judgment of conviction in the trial that resulted in the claimant's imprisonment; or

(2) an indictment, information, complaint, or other formal accusation.

V.T.C.A. Civil Practices & Remedies Code § 103.005. Admissible Evidence

(a) In the suit, the court may admit as evidence the record of the trial at which the petitioner was convicted and the pardon or proclamation issued to him by the Governor.

(b) The Court may also admit all court papers, orders, docket notations, or other writings of record in any court in this state as proof of the facts set forth in the writings.

V.T.C.A. Civil Practices & Remedies Code § 103.006. Damages

(a) If the jury or the judge in a nonjury trial finds that the claimant is entitled to compensation, the jury or judge shall assess damages to compensate the claimant fairly and reasonably for:

(1) physical and mental pain and suffering sustained by him as a proximate result of the erroneous conviction or imprisonment from the time of the conviction by the trial court; and

(2) all reasonable and necessary medical expense incurred by him as a proximate result of the erroneous conviction or imprisonment from the time of the conviction by the trial court.

(b) Damages assessed for physical and mental pain and suffering may not cxceed $25,000. Total damages assessed under this chapter may not exceed $50,000.

V.T.C.A. Civil Practices & Remedies Code § 103.007. Limitation of Action

(a) A person who claims compensation for a sentence served in whole or in part after August 30, 1965, must bring the action within two years after:

(1) the person ceased serving the sentence of imprisonment;

(2) the person was released from custody; or

(3) the person discovered or should have discovered the evidence substantiating his innocence.

(b) A person who claims compensation for a sentence served before August 30, 1965, must bring the action within two years after he discovered or should have discovered the evidence substantiating his innocence.

V.T.C.A. Civil Practices & Remedies Code § 104.001. State Liability; Persons Covered

In a cause of action based on conduct

described in Section 104.002, the state shall indemnify the following persons for actual damages, court costs, and attorney's fees adjudged against:

(1) an employee, a member of the governing board, or any other officer of a state agency, institution, or department;

(2) a former employee, former member of the governing board, or any other former officer of a state agency, institution, or department who was an employee or officer when the act or omission on which the damages are based occurred;

(3) a physician or psychiatrist licensed in this state who was performing services under a contract with any state agency, institution, or department or a racing official performing services under a contract with the Texas Racing Commission when the act or omission on which the damages are based occurred;

(4) a person serving on the governing board of a foundation, corporation, or association at the request and on behalf of an institution of higher education, as that term is defined by Section 61.003(8), Education Code, not including a public junior college; or

(5) the estate of a person listed in this section.

V.T.C.A. Civil Practices & Remedies Code § 104.002. State Liability; Conduct

Covered

(a) Except as provided by Subsection (b), the state is liable for indemnification under this chapter only if the damages are based on an act or omission by the person in the course and scope of the person's office, employment, or
contractual performance for or service on behalf of the agency, institution, or department and if:

(1) the damages arise out of a cause of action for negligence, except a wilful or wrongful act or an act of gross negligence; or

(2) the damages arise out of a cause of action for deprivation of a right, privilege, or immunity secured by the constitution or laws of this state or the United States, except when the court in its judgment or the jury in its verdict finds that the person acted in bad faith, with conscious indifference or reckless disregard; or

(3) indemnification is in the interest of the state as determined by the attorney general or his designee.

(b) The state is liable for indemnification under this chapter if:

(1) the person is liable for the damages solely because the person signed an industrial solid waste or hazardous waste manifest or other record required by Section 361.036, Health and Safety Code;

(2) the person signed the manifest or record in the course and scope of the person's office, employment, or contractual performance or service on behalf of the agency, institution, or department; and

(3) the person or company who signed the manifest did not increase or aggravate circumstances of contamination by negligent acts or wilful misconduct.

V.T.C.A. Civil Practices & Remedies Code § 104.003. Limits on Amount of Recoverable Damages

(a) Except as provided by Subsection (c), state liability for indemnification under this chapter may not exceed:

(1) $100,000 to a single person and $300,000 for a single occurrence in the case of personal injury, death, or deprivation of a right, privilege, or immunity, and

(2) $10,000 for a single occurrence of damage to property.

(b) The state is not liable under this chapter to the extent that damages are recoverable under a contract of insurance or under a plan of self-insurance authorized by statute.

(c) The limits on state liability

provided by Subsection (a) do not apply if:

(1) the state liability is based on Section 104.002(b); or

(2) the person for whose acts the state is liable under this chapter is a member of the Texas Board of Criminal Justice.

V.T.C.A. Civil Practices & Remedies Code § 104.0035. State Liability; Criminal Prosecution

(a) The state shall indemnify a person for reasonable attorney's fees incurred in defense of a criminal prosecution against the person if:

(1) the person is covered by Section 104.001;

(2) the attorney general determines that the conduct for which the person is criminally prosecuted could give rise to a civil cause of action covered by Section 104.002;

(3) the person is found not guilty after a trial or appeal or the complaint, information, or indictment is dismissed without a plea of guilty or nolo contenders being entered; and

(4) the attorney general determines that the complaint, information, or indictment presented against the person was dismissed because:

(A) the presentment was made on mistake, false information, or other similar basis, indicating absence of probable cause to believe, at the time of the dismissal, the person committed the offense, or

(B) the complaint, information, or indictment was void.

(b) State liability for indemnification under this section may not exceed $10,000 for the prosecution of a criminal offense or the prosecution of two or more offenses prosecuted in a single criminal action.

(c) This section does not apply to a person who is criminally prosecuted for driving while intoxicated under Article 6701l-1, Revised Statutes, or for involuntary manslaughter under Section 19.05(a)(2), Penal Code.

(d) An initial determination of the liability of the state for indemnification and the reasonableness of attorney's fees under this section shall be made by the attorney general upon application by any person other than:

(1) an employee or former employee of the attorney general's office; or

(2) the attorney general or a former attorney general.

(e) If the attorney general determines under Subsection (d) that the state is liable for indemnification, the attorney general shall indemnify the person for reasonable attorney's fees as provided by this section from funds appropriated for that purpose. If the attorney general determines that the state is not liable for indemnification, the person may appeal to a district court in Travis County. A person who is not entitled to an initial determination under Subsection

(d) may bring an action in a district court in Travis County.

(f) The district court in Travis County has jurisdiction to hear a suit under this section and may issue an order directing the attorney general's office to indemnify the person for reasonable attorney's fees as provided by this section. The judgment of the district court is final and is not subject to appeal.

V.T.C.A. Civil Practices & Remedies Code § 104.004. Defense by Attorney General

(a) The attorney general shall defend a public servant or estate listed in Section 104.001 in a cause of action covered by this chapter.

(b) The attorney general may settle or compromise the portion of a lawsuit that may result in state liability under this chapter.

(c) It is not a conflict of interest for the attorney general to defend a person tinder this chapter and also to prosecute a legal action against that person as required or authorized by law if different assistant attorneys general are assigned the responsibility of each action.

V.T.C.A. Civil Practices & Remedies Code } 104.005 Service of Process or Timely Notice to Attorney General Required

Except as provided by Section 104.0035, the state is not liable for the defense of an action covered by this chapter or

for damages, court costs, or attorney's fees unless:

(1) the attorney general has been served in the case and the state has been given an opportunity to defend the suit; or

(2) the person against whom the action is brought delivers to the attorney general all process served on the person not later than the 10th day after the date of service.

V.T.C.A. Civil Practices & Remedies Code § 104.006. Security or Bond

In a cause of action defended by the attorney general under this chapter, the attorney general or the individual or estate represented may not be required to advance security for cost or to give bond on appeal or on review by writ of error.

V.T.C.A. Civil Practices & Remedies Code § 104.007. Funds for Defense

(a) Only funds appropriated from the General Revenue Fund to the attorney general may be used to conduct the defense of an action that the attorney general is required to defend under this chapter.

(b) Conducting the defense of an action covered by this chapter includes investigating, taking depositions, making discovery, preparing for trial, preparing exhibits or other evidence, and participating in actual trial.

V.T.C.A. Civil Practices & Remedies Code

§ 104.008. No Waiver of Defenses

This chapter does not waive a defense, immunity, or jurisdictional bar available to the state or its officers, employees, or contractors.

V.T.C.A. Civil Practices & Remedies Code § 105.001 Definitions

In this chapter:

(1) "Fees and other expenses" means:

(A) the reasonable expenses of witnesses incurred in preparing to testify or in attending or testifying;

(B) a reasonable fee for the professional services of an expert witness; and

(C) the reasonable costs of a study, analysis, engineering report, test, or other project the court finds to be necessary for the preparation of the party's case.

(2) "Party" means an individual, partnership, corporation, association, or public or private organization other than a state agency.

(3) "State agency" means a board, commission, department, office, or other agency that:

(A) is in the executive branch of state government;

(B) was created by the constitution or a statute of this state; and

(C) has statewide jurisdiction.

V.T.C.A. Civil Practices & Remedies Code § 105.002. Recovery of Fees, Expenses, and Attorney's Fees

A party to a civil suit in a court of

this state brought by or against a state agency in which the agency asserts a cause of action against the party, either originally or as a counterclaim or cross claim, is entitled to recover, in addition to all other costs allowed by law or rule, fees, expenses, and reasonable attorney's fees incurred by the party in defending the agency's action if:

(1) the court finds that the action is frivolous, unreasonable, or without foundation; and

(2) the action is dismissed or judgment is awarded to the party.

V.T.C.A. Civil Practices & Remedies Code § 105.003. Motion of Frivolous Claim

(a) To recover under this chapter, the party must file a written motion alleging that the agency's claim is frivolous, unreasonable, or without foundation. The motion may be filed at any time after the filing of the pleadings in which the agency's cause of action is alleged.

(b) The motion must set forth the facts that justify the party's claim.

(c) The motion must state that if the action is dismissed or judgment is awarded to the party, the party intends to submit a motion to the court to recover fees, expenses, and reasonable attorney's fees.

V.T.C.A. Civil Practices & Remedies Code § 105.004. Payment of Costs

The agency shall pay the fees and expenses from funds appropriated for operation of the agency, funds

appropriated for the payment of fees and expenses under this chapter, or other funds available for that purpose.

V.T.C.A. Civil Practices & Remedies Code § 106.001. Prohibited Acts

(a) An officer or employee of the state or of a political subdivision of the state who is acting or purporting to act in an official capacity may not, because of a person's race, religion, color, sex, or national origin:

(1) refuse to issue to the person a license, permit, or certificate:
(2) revoke or suspend the person's license, permit, or certificate;
(3) refuse to permit the person to use facilities open to the public and owned, operated, or managed by or on behalf of the state or a political subdivision of the state:
(4) refuse to permit the person to participate in a program owned, operated, or managed by or on behalf of the state or a political subdivision of the state;
(5) refuse to grant a benefit to the person;
(6) impose an unreasonable burden on the person; or
(7) refuse to award a contract to the person.

(b) This section does not apply to a public school official who is acting under a plan reasonably designed to end discriminatory school practices.

(c)(1) In this subsection:
(A) "Minority business enterprises" means businesses at least 51

percent of which are both owned and controlled in management and daily operations by minorities or women.

(B) "Minorities" includes blacks, Hispanics, Asian-Americans, American Indians, and Alaska natives.

Text of subd. (c)(2) as amended by Acts 1991, 72nd leg., ch. 597, } 56

(2) Neither this section nor any home-rule charter or general law may be construed to prevent a home-rule municipality with a population of one million or more according to the most recent federal census from adopting a program or programs designed to reasonably increase participation by minority business enterprises in public contract awards. If, as part of a program described by this subdivision, the governing body of such a municipality establishes a goal of having a certain percentage of its public contract awards made to minority business enterprises, the governing body shall use a qualified independent source to establish to what extent minority business enterprises in the municipality are available to receive awards for each of the various kinds of construction of public contracts that will be awarded. The percentage goal shall not exceed the availability of minority business enterprises in the municipality as determined by the independent source.

Text of subd. (c)(2) as amended by Acts 1991, 72nd leg., ch. 665, } 1

(2) Neither this section nor any home-rule charter or general law may be

construed to prevent a home-rule municipality that has a population of 465,000 or more according to the most recent federal census or home-rule municipality located in a county containing: (1) a population of more than 465,000 according to the most recent federal census; and (2) more than 35 incorporated municipalities according to the most recent federal census from adopting a program or programs designed to reasonably increase participation by minority business enterprises in public contract awards, If, as part of a program described by this subdivision, the governing body of such a municipality establishes a goal of having a certain percentage of its public contract awards made to minority business enterprises, the governing body shall use a qualified in-house audit to establish to what extent minority business enterprises in the municipality are available to receive awards for each of the various kinds of construction of public contracts that will be awarded. The percentage goal shall not exceed the availability of minority business enterprises in the municipality as determined by the in-house audit.

(3) If the governing body of a municipality described by Subdivision (2) of this subsection adopts a program described by that subdivision, the governing body must also provide a program outlining acceptable assistance that may be provided by contractors or others to minority business enterprises in the municipality to achieve the purposes of the program described by Subdivision (2).

(4) General law or a home-rule charter that requires competitive bidding and the award of public contracts to the lowest responsible bidders is not affected by this subsection. However, all prospective bidders may be re-quired to meet uniform standards designed to assure a reasonable degree of participation by minority business enterprises in the performance of any public contract.

(5) This Subsection expires January 1, 1999.

V.T.C.A. Civil Practices & Remedies Code § 106.002. Remedies

(a) If a Person has violated or there are reasonable grounds to believe a person is about to violate Section 106.0 01, the person aggrieved by the violation may or threatened violation may sue for preventive relief, including a permanent or temporary injunction, a restraining order, or any other order.

(b) In an action under this section, unless the state is the prevailing party, the court may award the prevailing party reasonable attorney's fees as a part of costs. The state's liability for costs is the same as that of a private person.

V.T.C.A. Civil Practices & Remedies Code § 106.003. Penalties

(a) A Person commits an offense if the person knowingly violates Section 106.001.

(b) An offense under this section is a

misdemeanor punishable by:

(1) a fine of not more than $1,000;
(2) confinement in the county jail for not more than one year; or
(3) both fine and confinement.

V.T.C.A. Government Code § 22.001. Jurisdiction

(a) The supreme court has appellate jurisdiction, except in criminal law matters, coextensive with the limits of the state and extending to all questions of law arising in the following cases when they have been brought to the courts of appeals from appealable judgment of the trial courts:

(1) a case in which the justices of a court of appeals disagree on a question of law material to the decision;

(2) a case in which one of the courts of appeals holds differently from a prior decision of another court of appeals or of the supreme court on a question of law material to a decision of the case;

(3) a case involving the construction or validity of a statute necessary to a determination of the case;

(4) a case involving state revenue;

(5) a case in which the railroad commission is a party; and

(6) any other case in which it appears that an error of law has been committed by the court of appeals, and that error is of such importance to the

jurisprudence of the state that, in the opinion of the supreme court, it requires correction, but excluding those cases in which the jurisdiction of the court of appeals is made final by statute.

(b) A case over which the court has jurisdiction under Subsection (a) may be carried to the supreme court either by writ of error or by certificate from the court of appeals, but the court of appeals may certify a question of law arising in any of those cases at any time it chooses, either before or after the decision of the case in that court.

(c) An appeal may be taken directly to the supreme court from an order of a trial court granting or denying an interlocutory or permanent injunction on the ground of the constitutionality of a statute of this state. It is the duty of the supreme court to prescribe the necessary rules of procedure to be followed in perfecting the appeal.

(d) The supreme court has the power, on affidavit or otherwise, as the court may determine, to ascertain the matters of fact that are necessary to the proper exercise of its jurisdiction.

V.T.C.A. Government Code § 22.002. Writ Power

(a) The supreme court or a justice of the supreme court may issue writs of procedendo and certiorari and all writs of quo warranto and mandamus agreeable to the principles of law regulating those writs, against a district judge, a court of appeals or a justice of a court of

appeals, or any officer of state government except the governor, the court of criminal appeals, or a judge of the court of criminal appeals.

(b) The supreme court or, in vacation, a justice of the supreme court may issue a writ of mandamus to compel a district judge to proceed to trial and judgment in a case agreeable to the principles and usages of law, returnable to the supreme court on or before the first day of the term, or during the session of the term, or before any justice of the supreme court as the nature of the case requires.

(c) Only the supreme court has the authority to issue a writ of mandamus or injunction, or any other mandatory or compulsory writ or process, against any of the officers of the executive departments of the government of this; state to order or compel the performance of a judicial, ministerial, or discretionary act or duty that, by state law, the officer or officers are authorized to perform.

(d) Repealed by Acts 1987, 70th Leg., ch. 148, § 2.03, eff. Sept. 1, 1987.

(e) The supreme court or a justice of the supreme court, either in term time or vacation, may issue a writ of habeas corpus when a person is restrained in his liberty by virtue of an order, process, or commitment issued by a court or judge on account of the violation of an order, judgment, or decree previously made, rendered, or entered by the court or judge in a civil case. Pending the hearing of an application for a writ of

habeas corpus, the supreme court or a justice of the supreme court may admit to bail a person to whom the writ of habeas corpus may be so granted.

V.T.C.A. Government Code § 22.201.
Courts of Appeals Districts

(a) The state is divided into 14 courts of appeals districts with a court of appeals in each district.

(b) The First Court of Appeals District is composed of the counties of Austin, Brazoria, Brazos, Burleson, Chambers, Colorado, Fort Bend, Galveston, Grimes, Harris, Trinity, Walker, Waller, and Washington.

(c) The Second Court of Appeals District is composed of the counties of Archer, Clay, Cooke, Denton, Hood, Jack, Montague, Parker, Tarrant, Wichita, Wise, and Young.

(d) The Third Court of Appeals District is composed of the counties of Bastrop, Bell, Blanco, Burnet, Caldwell, Coke, Cornal, Concho, Fayette, Hays, Irion, Lampasas, Lee, Llano, McCulloch, Milam, Mills, Runnels, San Saba, Schleicher, Sterling, Tom Green, Travis, and Williamson.

(e) The Fourth Court of Appeals District is composed of the counties of Atascosa, Bandera, Bexar, Brooks, Dimmit, Duval, Edwards, Frio, Gillespie, Guadalupe, Jim Hogg, Jim Wells, Karnes, Kendall, Kerr, Kimble, Kinney, LaSalle, McMullen, Mason, Maverick, Medina, Menard, Real, Starr, Sutton, Uvalde, Val

Verde, Webb, Wilson, Zapata, and Zavala.

(f) The Fifth Court of Appeals District is composed of the counties of Collin, Dallas, Grayson, Hunt, Kaufman, Rockwall, and Van Zandt.

(g) The Sixth Court of Appeals District is composed of the counties of Bowie, Camp, Cass, Delta, Fannin, Franklin, Gregg, Harrison, Hopkins, Hunt, Lamar, Marion, Morris, Panola, Red River, Rusk, Titus, Upshur, and Wood.

(h) The Seventh Court of Appeals District is composed of the counties of Armstrong, Bailey, Briscoe, Carson, Castro, Childress, Cochran, Collins...

V.T.C.A. Government Code § 22.220. Civil Jurisdiction

(a) Each court of appeals has appellate jurisdiction of all civil cases within its district of which the district courts or county courts have jurisdiction when the amount in controversy or the judgment rendered exceeds $100, exclusive of interest and costs.

(b) If a court of appeals having jurisdiction in a case, matter, or controversy that requires immediate action is unable to take immediate action because the illness, absence, or unavailability of the justices causes fewer than three members of the court to be present, the nearest available court of appeals, under rules prescribed by the supreme court, may take the action required in the case, matter, or controversy.

(c) Each court of appeals may, on

affidavit or otherwise, as the court may determine, ascertain the matters of fact that are necessary to the proper exercise of its jurisdiction.

V.T.C.A. Government Code § 22.221. Writ Power

(a) Each court of appeals or a justice of a court of appeals may issue a writ of mandamus and all other writs necessary to enforce the jurisdiction of the court.

(b) Each court of appeals for a court of appeals district may issue all writs of mandamus, agreeable to the principles of law regulating those writs, against a judge of a district or county court in the court of appeals district.

(c) Repealed by Acts 1987, 70th Leg., ch. 148, § 2.03, eff. Sept. 1, 1987.

(d) Concurrently with the supreme court, the court of appeals of a court of appeals district in which a person is restrained in his liberty, or a justice of the court of appeals, may issue a writ of habeas corpus when it appears that the restraint of liberty is by virtue of an order, process, or commitment issued by a court or judge because of the violation of an order, judgment, or decree previously made, rendered, or entered by the court or judge in a divorce case, wife or child support case, or child custody case. Pending the hearing of an application for a writ of habeas corpus, the court of appeals or a justice of the court of appeals may admit to bail a person to whom the writ of habeas corpus may be granted.

V.T.C.A. Government Code § 24.007. Jurisdiction

The district court has the jurisdiction provided by Article V, Section 8, of the Texas Constitution.

V.T.C.A. Government Code § 24.008. Other Jurisdiction

The district court may hear and determine any cause that is cognizable by courts of law or equity and may grant any relief that could be granted by either courts of law or equity.

Vernon's Ann. Tex. Rules Civ. Proc., rule 45. DEFINITION AND SYSTEM

Pleadings in the district and county courts shall
(a) be by petition and answer;
(b) consist of a statement in plain and concise language of the plaintiff's cause of action or the defendant's grounds of defense. That an allegation be evidentiary or be of a legal conclusion shall not be grounds for objection when fair notice to the opponent is given by the allegation as a whole;
(c) contain any other matter which may be required by any other law or rule authorizing or regulating any particular action or defense;
(d) be in writing, on paper measuring approximately 8 1/2 inches by 11 inches, and signed by the party or his attorney, and either the signed original together with any verification or a copy of said original and copy of any such verification shall be filed with the

court. The use of recycled paper is recommended When a copy of the signed original is tendered for filing, the party or his attorney filing such copy, is required to maintain the signed original for inspection by the court or any party incident to the suit, should a question be raised as to its authenticity.

All pleadings shall be construed so as to do substantial justice.

Vernon's Ann. Tex. Rules Civ. Proc., rule 46. PETITION AND ANSWER; EACH ONE INSTRUMENT OF WRITING

The original petition, first supplemental petition, second supplemental petition, and every other, shall each be contained in one instrument of writing, and so with the original answer and each of the supplemental answers.

Vernon's Ann. Tex. Rules Civ. Proc., rule 47. CLAIMS FOR RELIEF

An original pleading which sets forth a claim for relief, whether an original petition, counterclaim, cross-claim, or third party claim, shall contain

(a) a short statement of the cause of action sufficient to give fair notice of the claim involved,

(b) in all claims for unliquidated damages only the statement that the damages sought are within the jurisdictional limits of the court, and

(c) a demand for judgment for all the

other relief to which the party deems himself entitled.

Relief in the alternative or of several different types may be demanded; provided, further, that upon special exception the court shall require the pleader to amend so as to specify the maximum amount claimed.

Vernon's Ann. Tex. Rules Civ. Proc., rule 48. ALTERNATIVE CLAIMS FOR RELIEF

A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based upon legal or equitable grounds or both.

Vernon's Ann. Tex. Rules Civ. Proc., rule 49. WHERE SEVERAL COUNTS

Where there are several counts in the petition, and entire damages are given, the verdict or judgment, as the case may be, shall be good, notwithstanding one or more of such counts may he defective.

Vernon's Ann. Tex. Rules Civ. Proc., rule 50. PARAGRAPHS, SEPARATE STATEMENTS

All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings, so long as the pleading containing such paragraph has not been superseded by an amendment as provided by Rule 65. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

Vernon's Ann. Tex. Rules Civ. Proc., rule 51. JOINDER OF CLAIMS AND REMEDIES

(a) Joinder of Claims. The plaintiff in his petition or in a reply setting forth a counterclaim and the defendant in an answer setting forth a counterclaim may join either as independent or as alternate claims as many claims either legal equitable or both as he may have against an opposing party. There may be a like joinder of claims when there are multiple parties if the requirements of Rules 39, 40, and 43 are satisfied. There may be a like joinder of cross claims or third-party claims if the requirements of Rules 38 and 97, respectively, are satisfied.

(b) Joinder of Remedies. Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion the two claims may be joined in a single action; but the court

shall grant relief in that action only in accordance with the relative substantive rights of the parties. This rule shall not be applied in tort cases so as to permit the joinder of a liability or indemnity insurance company, unless such company is by statute or contract directly liable to the person injured or damaged.

Vernon's Ann. Tex. Rules Civ. Proc., rule 63. AMENDMENTS AND RESPONSIVE PLEADINGS

Parties may amend their pleadings, respond to pleadings, on fill of other parties, file suggestions of death and make representative parties, and file such other pleas as they may desire by filing such pleas with the clerk at such time as not to as not to operate as a surprise to the opposite party; provided, that any pleading, responses or pleas offered for filing within seven days of the date of trial or thereafter, or after such time as may be ordered by the judge under Rule 166, shall be filed only after leave of the judge obtained, which leave by the judge unless there is a showing that such filing will operate as a surprise to the opposite party.

Vernon's Ann. Tex. Rules Civ. Proc., rule 166a. SUMMARY JUDGMENT

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the adverse party has appeared or answered, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof. A

summary judgment, interlocutory, in character, may be rendered on the issue of liability alone although there is a genuine issue as to amount of damages.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.
(c) Motion and Proceedings Thereon. The motion for summary judgment shall state the specific grounds therefor. Except on leave of court, with notice to opposing counsel, the motion and any supporting affidavits shall be filed and served at least twenty-one days before the time specified for hearing. Except on leave of court, the adverse party, not later than seven days prior to the day of hearing may file and serve opposing affidavits or other written response. No oral testimony shall be received at the hearing. The judgment sought shall be rendered forthwith if (i) the deposition transcripts, interrogatory answers, and other discovery responses referenced or set forth In the motion or response, and (ii) the pleadings, admissions, affidavits, stipulations of the parties, and authenticated or certified public records, if any, on file at the time of the hearing, or filed thereafter and before judgment with permission of the court, show that, except as to the amount of damages, there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law on the issues expressly set out in the motion or in an answer or any other

response. Issues not expressly presented to the trial court by written motion, answer or other response shall not be considered on appeal as grounds for reversal. A summary judgment may be based on uncontroverted testimonial evidence of an interested witness, or of an expert witness as to subject matter concerning which the trier of fact must be guided solely by the opinion testimony of experts, if the evidence is clear, positive and direct, otherwise credible and free from contradictions and inconsistencies, and could have been readily controverted.

(d) Appendices, References and Other Use of Discovery Not Otherwise on File. Discovery products not on file With the clerk may be used as summary judgment evidence if copies of the material, appendices containing the evidence, or a notice containing specific references to the discovery or specific references to other instruments, are filed and served on all parties together with a statement of intent to use the specified discovery as summary judgment proofs: (i) at least twenty-one days before the hearing if such proofs are to be used to support the summary judgment; or (ii) at least seven days before the hearing if such proofs are to be used to oppose the summary judgment.

(e) Case Not Fully Adjudicated on Motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts

exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(f) Form of Affidavits; Further Testimony. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions or by further affidavits. Defects in the form of affidavits or attachments will not be grounds for reversal unless specifically pointed out by objection by an opposing party with opportunity, but refusal, to amend.

(g) When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be

obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(h) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

Vernon's Ann. Tex. Rules Civ. Proc.,rule 169. REQUEST FOR ADMISSION

I. Request for Admission. At any time after commencement of the action, a party may serve on any other Party a written request for the admission, for the purposes of the pending action only, of the truth of any matters within the scope of Rule 166b set forth in the request that relate statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of the documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Whenever a party is represented by an attorney of record, service of a request for admission shall be made on his attorney unless service on the party himself is ordered by the court. A true copy of a request for admission or of a written

answer or objection, together with proof of the service thereof as provided in Rule 21a shall be filed promptly in the clerk's office by the party making it.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted without necessity of a court order unless, within thirty days after service of the request, or within such time as the court may allow, or as otherwise agreed by the parties, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney, but, unless the court shortens the time, a defendant shall not he required to serve answers or objections before the expiration of fifty days after service of the citation and petition upon that defendant. If objection is made, the reason therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons that the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states, that he has made reasonable inquiry and that the information known or easily obtainable by him is insufficient to enable him to admit or deny. A party who considers

that a matter of which an admission is requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of paragraph 3 of Rule 215, deny the matter or set forth reason why he cannot admit or deny it.

2. Effect of Admission. Any matter admitted under this rule is conclusively established as to the party making the admission unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 166 governing amendment of a pretrial order, and Rule 166b-6 governing duty to supplement discovery responses, the court may permit withdrawal or amendment of responses and deemed admissions upon a showing of good cause for such withdrawal or amendment if the court finds that the parties relying upon the responses and deemed admissions will not be unduly prejudiced and that the presentation of the merits of the action will be subserved thereby. Any admission made by a party under this rule is for the purpose of the pending action only and neither constitutes an admission by him for any other purpose nor may be used against him in any other proceeding.

Vernon's Ann. Tex. Const. Art. 5, § 8: Jurisdiction of District Court

District Court jurisdiction consists of exclusive, appellate, and original jurisdiction of all actions, proceedings, and remedies, except in cases where exclusive, appellate, or original jurisdiction may be conferred by this Constitution or other law on some other

court, tribunal, or administrative body. District Court judges shall have the power to issue writs necessary to enforce their jurisdiction.

The District Court shall have appellate jurisdiction and general supervisory control over the County Commissioners Court, with such exceptions and under such regulations as may be prescribed by law.

United States Code, Const. Amend. XIV,

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

...

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

(2)

96-060

No. 95-799

Supreme Court, U.S.
FILED
AUG 7 1996
CLERK

In The
Supreme Court of the United States
October Term, 1995

ELIJAH W. RATCLIFF
Petitioner,

vs.

THE STATE BAR OF TEXAS
Respondent.

On Petition for Writ of Mandamus
To The
Supreme Court of Texas

BRIEF OF RESPONDENT

Respectfully submitted,

Linda A. Acevedo
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STATE BAR OF TEXAS
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15pp

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STATEMENT OF THE CASE

Petitioner, Elijah W. Ratcliff, initially brought suit in the District Court of Travis County, Texas against the Texas Employment Commission seeking to set aside employment taxes. During the course of the proceedings, Ratcliff amended his suit to add several other defendants including the State Bar of Texas and Karen Johnson, Executive Director of the State Bar of Texas. The allegations against the State Bar and Mrs. Johnson were vague and unspecified but appeared to stem from Ratcliff's disbarment from the practice of law on February 28, 1974.

The trial court granted a plea to the jurisdiction on behalf of the State Bar of Texas and Karen Johnson and dismissed Ratcliff's Third Amended Petition with prejudice.

Ratcliff appealed the Order to the Court of Appeals for the Third District of Texas. On October 11, 1995, the Court of Appeals affirmed the trial court's judgment. The opinion of the court of appeals correctly states the nature and result of the suit.

Ratcliff filed an application for writ of error with the Texas Supreme Court on November 29, 1995 and such application was denied by the Supreme Court of Texas on December 22, 1996. (Case No. 95-1232).

Ratcliff now seeks a writ of mandamus against a state district judge to set aside the Order granting the plea to the jurisdiction. This response is filed on behalf of the State Bar of Texas and Karen Johnson.

STATEMENT OF THE FACTS

Petitioner, Elijah W. Ratcliff, initially brought this action in the District Court of Travis County, Texas against the Texas Employment Commission seeking to set aside employment taxes. Ratcliff amended his petition to include the State Bar of Texas as a defendant. The Suit sought monetary damages and equitable relief against the State Bar for unspecified acts against Ratcliff.

The State Bar of Texas filed special exceptions to the First Amended Petition excepting to the petition on the basis that 1) it alleged that the State Bar of Texas was an agency of the State of Texas; 2) for failing to state a cause of action and failing to give fair notice of what it must defend; 3) for failing to specify the allegations of activities and

misconduct; 4) for failing to establish standing to sue the State Bar; and 5) for failing to specify the amount of damages sought.

After a hearing, the trial court granted the State Bar's special exceptions and ordered Ratcliff to amend his petition. Ratcliff filed a Second Amended Petition but failed to correct the defects set forth in the State Bar's special exceptions. Instead, Ratcliff recounts a litany of perceived injustices associated with a criminal conviction obtained against him, with his disbarment from the practice of law in 1974, and his inability to obtain reinstatement over the last twenty (20) years.

Consequently, the State Bar filed special exceptions to the second amended petition. After a hearing, the trial court granted the Bar's special

exceptions and Ratcliff was specifically ordered to amend particular portions of the petition within thirty (30) days of the hearing.

Between the date of the hearing and the signing of the Order by the trial court, Ratcliff amended his petition again and added as a defendant Karen Johnson, the Executive Director of the State Bar of Texas. No significant changes were made to this latest pleading nor were any changes made to the portions of the petition specifically ordered by the trial court to be amended.

Thereafter, the State Bar of Texas and Karen Johnson filed a Plea to the Jurisdiction. After a hearing, the plea to the jurisdiction was granted and Ratcliff's Third Amended Original Petition was dismissed with prejudice. The trial court also noted

that Ratcliff had failed to follow the Court's order pertaining to the State Bar's special exceptions. Because there was some confusion as to the finality of this Order, the State Bar sought clarification and a subsequent Order dismissing Ratcliff's claims was entered.

OBJECTION TO JURISDICTION

Petitioner, Ratcliff asserts jurisdiction of this Court pursuant to 28 U.S.C. §1651(a), i.e., by writ of mandamus. However, Ratcliff has failed to establish jurisdiction pursuant to Rule 20.1 of the Rules of Supreme Court of the United States. No cases are pending in any federal court and thus this writ is not in aid of the Court's appellate jurisdiction. Rather, Ratcliff seeks a collateral attack upon a final state judgment. Therefore, the petition

should be denied for lack of jurisdiction.

ARGUMENT

The Supreme Court lacks jurisdiction to issue a writ of mandamus.

Ratcliff continues in his attempt to collaterally attack his state court judgment of his 1974 disbarment. Federal courts do not have subject matter jurisdiction over these types of challenges. *Musslewhite v. State Bar of Texas*, 32 F.3d 942, 945 (5th Cir. 1994); *Liedtke v. State Bar of Texas*, 18 F.3d 315 (5th Cir. 1994).

In addition, Supreme Court jurisdiction is justified to control state court action by using extraordinary writs **only when the litigation is prospectively within the Court's appellate jurisdiction.** See *United States v. Harper*, 729 F.2d

1216, 1221 (9th Cir. 1984); *Gulfstream Aerospace Corp. V. Mayacamas Corp.*, 108 S.Ct.1133 (1988). *16 Wright, Miller, Cooper & Gressman, Federal Practice and Procedure: Jurisdiction §4018 (1977).*

This requires the existence of a federal question. *Id.* Otherwise, extraordinary writs could be used to circumvent the policies that underlie the independent and adequate state ground doctrine. *Id.*

Petitioner, Elijah W. Ratcliff's original action against the Texas Employment Commission seeking to set aside employment taxes was amended to include the State Bar of Texas as a defendant. Petitioner has made three failed attempts to amend his petition by specifying how or why his 1974 disbarment from the practice of law relates to the original action. Despite this, Petitioner persists in

trying to use his original action to somehow effect his disbarment. Petitioner's continued efforts to negate his disbarment is not a federal question.

Petitioner does not present any arguments that Texas substantive law is insufficient to resolve questions of attorney licensing. (Pet. Br. at 1-2). At best, petitioner argues that the state court's decisions are erroneous given Texas law. *Id.* Nevertheless, with respect to attorney licensing issues in the State of Texas, the Texas Supreme Court is the best determiner of the merits of Petitioner's complaint against the State Bar of Texas.

The doctrine of independent and adequate state ground requires that they be allowed to do so. "So, too, it would fly in the face of the policies that underlie the independent and adequate state law

doctrine to use extraordinary writs as a method of seizing federal questions out of incomplete litigation that might ultimately be resolved independently on adequate state grounds." *16 Wright, Miller, Cooper & Gressman, Federal Practice and Procedure: Jurisdiction § 4018.*

PRAYER

WHEREFORE, PREMISES, ARGUMENTS AND AUTHORITIES CONSIDERED, Respondent prays that Petitioner's Petition for Writ of Mandamus be denied and for such other and further relief as this Court may deem proper.

Respectfully submitted,

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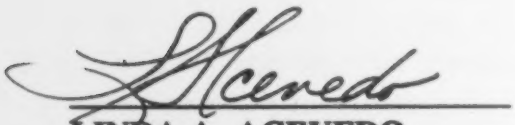
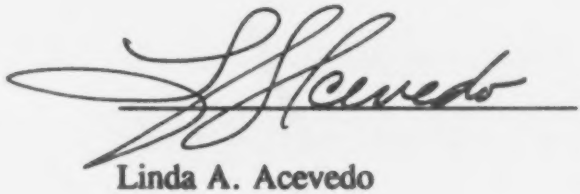


LINDA A. ACEVEDO
State Bar Card No. 00829825

ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

This is to certify that the above and foregoing Brief of Respondent has been served on Elijah W. Ratcliff, pro se, P.O. Box 862, Livingston, Texas 77351, and on all other parties through their attorney of record, Susan F. Eley, P.O. Box 12548, Austin, Texas 78711-2548, by delivery of true and correct copies to them by certified mail, return receipt requested, by depositing the same, enclosed in a postpaid, properly addressed wrapper in an oficial depository under the care and custody of the United States Postal Service on the 8th day of August, 1996.



Linda A. Acevedo

Supreme Court, U.S.
FILED
AUG 22 1996
CLERK

(3)

NO. 96-60

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

IN RE ELIJAH W. RATCLIFF, ETC.,

PETITIONER

ON PETITION FOR WRIT OF MANDAMUS

REPLY TO BRIEF IN OPPOSITION

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P. O. Box 862
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PRELIMINARY STATEMENT AND REPLY TO STATEMENT OF THE CASE

Petitioner has not received a brief in opposition to the immediately entitled and docketed Petition for Writ of Mandamus, and the time for filing such a brief under **U. S. Sup. Ct. Rule 20.3(b), 28 U.S.C.**, has expired. However, a document entitled Brief of Respondent, with minute amendments to a Brief of Respondent received in the earlier docket, No. 95-799, was received, and it is addressed, to wit:

The Brief of Respondent served under date of the 8th day of August, 1996, alleges, at p. 1 thereof, that the trial Court granted a plea to the jurisdiction, but it offers no hint as to the identity of the fiat to which it alludes (See Petition for Writ of Mandamus pp 1, lines 1 - 7, A-17 - A-18, and A-38 - A-39).

Petitioner did indeed perfect an appeal to the Court of Appeals, Third Court of Appeals District of Texas, Austin, Texas, followed by an Application for Writ of Error to the Supreme Court of Texas, No. 95-1232, but he has not been furnished with notice of a denial of such application by personnel of the Supreme Court of Texas, and such notification is required pursuant to **Vernon's Ann. Tex. Rules Ap. Proc., Rule 91.**

Thus, the immediate protocol is not limited to the Judges of the District Court below, but it relates, also, to the State Court of Appeals at Austin, Texas, as well as to the Supreme Court of Texas, which Supreme Court has, apparently, breached either **Vernon's Ann. Tex. Rules Ap. Proc., Rule 91 or Rule 134.**

The cited Rule 91 provides:

"On the date an opinion of an appellate court is handed down, the clerk of the appellate court shall mail or deliver to the clerk of the trial court, to the trial judge who tried the case, and to the State, and each of the defendants in a criminal case, and to each of the parties to the trial court's final judgment in a civil case, a copy of the opinion handed down by the appellate court and a copy of the judgment rendered by the appellate court as entered in the minutes. Delivery to a party having counsel indicated of record shall be made to counsel. The clerk of the trial court shall file a copy of the opinion among the papers of the cause in such court. When there is more than one attorney for a party, the attorneys may designate in advance the one to whom the copies of the opinion and judgment shall be mailed."...

The cited Rule 134 provides:

"When the application shall have been filed for a period of ten days, if the court determines to deny, refuse or dismiss the same, whether or not the respondent has filed a brief in response, the clerk of the court will retain the application, together with the record and accompanying papers, for fifteen days from the date of rendition of the judgment denying, refusing or dismissing the writ. At the end of

that time, if no motion for rehearing has been filed, or upon the overruling or dismissal of a motion for rehearing, the Clerk of the Supreme Court shall transmit to the court of appeals a certified copy of the orders denying, refusing or dismissing the application and of the order overruling the motion for rehearing and shall return all filed papers to the Clerk of the Court of Appeals, except the application for writ of error, any brief in response and any other briefs filed in the Supreme Court."

Still further, **Vernon's Ann. Tex. Rules Ap. Proc., Rule 135**, provides:

"When the Supreme Court grants, denies, refuses or dismisses an application for writ of error or a motion for rehearing, the clerk of the court shall notify the parties or their attorneys of record by letter."

The magisterial irregularities contravening the cited rules of court are due process violations in isolation meriting the issuance of the Great Writ to decipher culpability in the premises preliminary to enforcing Petitioner's remedy.

REPLY TO STATEMENT OF THE FACTS

Respondent State Bar of Texas alleges, in its Statement of the Facts, the intended contents and imports of its motions and the resulting orders of the

trial Court. However, the best evidence of the import of the Court's orders and judgment is a true and correct copy of such orders and judgment as referenced by Petitioner in the Petition for Writ of Mandamus at its Statement of Case, pp 5 - 12.

It is fundamentally material that the Brief of Respondent, filed in behalf of Respondents State Bar of Texas and Karen Joihnson, its Executuve Director at the pertinent interim, makes no reference to any specific order, or orders, that it relies upon to support its allegations that its special exceptions were sustained, as dictated by astute and professional briefing practices (See **U. S. Sup. Ct. Rules 14.1(g)(i); 15.2; 20.2 and 20.3, 28 U.S.C.**; also, see **Vernon's Ann. Tex. Rules Ap. Proc., Rules 74(d), (e) and (f), and 131(e) and (f).**

Similarly, it is fundamentally insufficient that the subject Brief of Respondent makes no professionally specific reference to an order which it alleges, at p. 5 thereof, sustains its plea to the jurisdiction.

Not only does the Brief of Respondent fail to direct the Supreme Court's attention to a particular record, transcript, appendix or exhibit reference for the orders to which it alludes, it does not even offer a date upon which any alleged order was rendered or entered so as to facilitate identification of the basis for its allegation that a proper order or judgment was entered by the trial Court.

REPLY TO OBJECTION TO JURISDICTION

The Petition for Writ of Mandamus,

appropriately, asserted jurisdiction, at p. 1, pursuant to **28 U.S.C. § 1651**, without restriction to Section (a) thereof, but in conjunction with **28 U.S.C. §§ 1257 and 1447(d)**, at p. 2 thereof. Such Brief of Respondent totally disregards the jurisdiction provided by **28 U.S.C. § 1257(a)** making

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had"

reviewable by the United States Supreme Court by writ of certiorari

> "where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or treaties or statutes of, or any commission held or authority exercised under, the United States."

REPLY TO ARGUMENT

The Brief of Respondent, at p. 7, offers a blanket allegation that the Supreme Court lacks jurisdiction to issue a writ of mandamus, and alleges, further, that

> "Federal courts do not have subject matter jurisdiction over these types of challenges,"

citing two Fifth Circuit cases, without correlating any nexus between such Federal district court challenges and the immediate proceeding initiated in the

State district courts of Travis County, Texas, and without addressing the jurisdiction which the United States Supreme Court acknowledged in **Consumers Union of the United States v Virginia State Bar and the Supreme Court of Virginia**, 688 F.2d 218, certiorari denied 103 S.Ct. 3124 (1983), 462 U.S. 1137, 77 L.Ed.2d 1375, and **District of Columbia Court of Appeals v Feldman**, 103 S.Ct. 1303 (1983), 460 U.S. 462, 75 L.Ed.2d 206.

Liedtke v State Bar of Texas, 18 F.3d 315 (5th Cir. 1994), expressly states that an

> "Attorney's recourse following alleged improper disbarment in state court disciplinary proceedings was with state appelate courts and thereafter United States Supreme Court on application for writ of certiorari, not by complaint to federal district court."

Musslewhite v State Bar of Texas, 32 F.3d 942 (5th Cir. 1994), is similarly distinguishable from our immediate facts as the Fifth Circuit ruled that Federal courts do not have subject matter jurisdiction over challenges to state court decisions in pasrticular attorney disciplinary cases arising out of judicial proceedings, notwithstanding, the allegations of the complaint.

At p. 8, second original paragraph, Counsel for Respondent argues against the joinder of parties engaged by Petitioner. However, the issue of severance was raised in the trial Court, and the

propriety of such pleading option as exercised by Petitioner was acknowledged by the trial Court (See Appendix to Petition, pp A-21 - A-22 and B-44 - B-46). **Vernon's Ann. Tex. Rules Civ. Proc., Rules 48, 49, 50, 51 and 63.**

While it is true that Petitioner has cited ample textual State statutory, precedent and constitutional authority to resolve questions of attorney licensing, if applied fairly, it is the unrelenting, depriving, application of the subject complexity of laws prevailing over the pertinent interim, comprising an unlawful and unsustainable State policy, which contravenes Federal due process. **Consumers Union of the United States v Virginia State Bar and the Supreme Court of Virginia, supra.**, and **District of Columbia Court of Appeals v Feldman, supra.**

At p. 1 of the Brief of Respondent, lines 4 - 6, Counsel for Respondent misrepresents that:

> "Petitioner does not present any arguments that Texas substantive law is insufficient to resolve questions of attorney licensing."

Where race, creed, color or ethnicity is not part of the equation, such a proposition might have validity, but Respondents have notoriously declined to afford Petitioner due process of law and equal protection of the laws as mandated by **United States Code, Const. Amend. XIV.** Such Brief makes reference to pp 1 - 2 of the Petition, devoted in accordance with **U. S. Sup. Ct. Rules 14.1(d) and (2), 28 U.S.C.**, to a

recitation of the "Opinions Below" and "Jurisdiction," which sections of the Petition do not purport to engage exhaustive argument on the substantive irregularities.

The Petition obviously concedes that considerations of comity make the Supreme Court of Texas the primary determiner of the merits on Petitioner's complaint against Respondent State Bar of Texas, but Petitioner maintains further that at some meaningful time, the Supreme Court of Texas must afford Petitioner and his business interests due process of law and equal protection of the laws, following the satisfactory exhaustion of State remedies, under standards established by the Supreme Court of the United States. **42 U.S.C. § 1981, et seq.; United States Code, Const. Amends. XIII and XIV; Nesbern v Lovelet**, Inc., 308 F. Supp. 407 (SD OH 1968)

At p. 8 of Respondent's Brief, 16 Wright, Miller, Cooper & Gressman, **Federal Practice and Procedure:** Jurisdiction § 4018 (1977), is presented as authority that the Suprme Court lacks jurisdiction to issue the writ. However, such authority supports the contrary, providing, as updated, that:

> "Mandamus would be justified to prevent a state trial judge from entering an order that could not conceivably be squared with the Supreme Court's mandate."

16 Wright, Miller, Cooper & Gressman, **Federal Practice and Procedure:** Jurisdiction § 4018 (West Publishing Co., St. Paul, MN 1996).

Respondent's cited authority, also, at § 4021 thereof, supports the granting of the extraordinary writ arising out of the failure of the Supreme Court of Texas to notify Petitioner of its ruling, if any, on the Application for Writ of Error, in accordance with **Vernon's Ann. Tex. Rules Ap. Proc., Rules 91 and 135**, or, alternatively, failure to rule on the Application in due course as prescribed by **Rule 134**, thereof. 16 Wright, Miller, Cooper & Gressman, **Federal Practice and Procedure:** Jurisdiction § 4021 (West Publishing Co., St. Paul, MN 1996). **Johnson v Mississippi**, 108 S.Ct. 1981 (1988), 1987, 486 U.S. 578, 586, 100 L.Ed.2d 575.

Relying further on the subject authority cited by Respondent, at § 4019, and further addressing Respondent's "Objection to Jurisdiction" in its Brief at p. 6, it is clearly set forth that "the Supreme Court need not defer to state court interpretation of federal law."

Gulfstream Aerospace Corp. v Mayacamas Corp., 108 S.Ct. 1133 (1988), 485 U.S. 271, 99 L.Ed.2d 296, cited by Counsel for Respondent, has no similarity, whatsoever, to our immediate facts as there the parties were concerned with an attempt to stay or dismiss an action filed in Federal district court subsequent to the filing of an action involving the same issues in a State court. This Court held that the subject order denying a stay or dismissal did not purport to end the litigation, but it insured that the proceeding would continue in the Federal district court, inconsistent with a final judgment contemplated by **28 U.S.C. § 1291.**

Contrary to our immediate facts, the petition therein did not present an abuse of discretion by the subject district court in refusing to follow a technical precedent evolving from the distinction between Federal proceedings at law as contrasted with those in equity where, under current procedural rules, and the merger of law with equity, the precedent is no longer sound, practical or applicable.

Finally, **United States v Harper**, 729 F.2d 1216 (9th Cir. 1984), cited by Respondent, in which the writ was issued to preempt the district court from proceeding further under the Espionage Act which was determined to be unconstitutional attributable to insufficient legislative guidelines to control the fact finder's discretion in imposing the death penalty, is consistent with the arguments presented by the immediate Petition for Writ of Mandamus.

CONCLUSION:

Mandamus relief should be granted, preliminary to issuing the writ of certiorari.

Respectfully submitted this 20th day of August, 1996.

_____

PETITIONER, PRO SE

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